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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0672; Project Identifier MCAI–2020–01008–T; Amendment 39–21185; AD 2020–16–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals. This AD requires repetitive cleaning and greasing of affected cargo door seals, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective August 19, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 19, 2020.

The FAA must receive comments on this AD by September 18, 2020.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0672.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0672; 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 AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0133, dated June 10, 2020 (''EASA AD 2020–0133'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318–111, –112, –121, and –122; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N; A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N; and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals. The FAA is issuing this AD to address low halon concentration. This condition, if not corrected, could affect the fire extinguishing system efficiency in the cargo compartments, possibly resulting in failure of the system to contain a cargo compartment fire. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0133 describes procedures for repetitive cleaning and greasing of affected cargo door seals.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2020–0133, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and

discussed under ''Differences Between this AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0133 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0133 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0133 that is required for compliance with EASA AD 2020–0133 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0672.

FAA's Justification and Determination of the Effective Date

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 waiving notice and comment prior to adoption of this rule because the fire extinguishing system efficiency in the forward and aft cargo compartments is adversely affected due to air leakage through cargo door seals. This condition, if not corrected, may result in failure of the fire extinguishing system to contain a cargo compartment fire. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0672; Project Identifier MCAI–2020–01008–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this AD based on 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 the FAA receives, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the FAA receives about this AD.

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 final rule, request for comments, 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 final rule, request for comments, 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 person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Differences Between This AD and the MCAI

EASA AD 2020–0133 defines ''affected parts'' as those having certain part numbers, but this AD defines ''affected parts'' as those specified in EASA AD 2020–0133 and forward and aft cargo door seals part number D5237106020400S, approved under PMA PQ1715CE. The FAA has determined that the part number approved under PMA PQ1715CE is also affected by the unsafe condition. This difference has been coordinated with EASA and EASA has indicated they may revise EASA AD 2020–0133 to include this part number.

Interim Action

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

Regulatory Flexibility Act (RFA)

The requirements of the 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 the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,630 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$138,550

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–16–01 Airbus SAS: Amendment 39–21185; Docket No. FAA–2020–0672; Project Identifier MCAI–2020–01008–T.

(a) Effective Date

This AD becomes effective August 19, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals. The FAA is issuing this AD to address low halon concentration. This condition, if not corrected, could affect the fire extinguishing system efficiency in the cargo compartments, possibly resulting in failure of the system to contain a cargo compartment fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0133, dated June 10, 2020 (''EASA AD 2020–0133'').

(h) Exceptions to EASA AD 2020–0133

(1) Where EASA AD 2020–0133 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0133 does not apply to this AD.

(3) Where EASA AD 2020–0133 defines ''affected parts'' as those having certain part numbers, for this AD ''affected parts'' are those specified in EASA AD 2020–0133 and forward and aft cargo door seals part number D5237106020400S, approved under PMA PQ1715CE.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC*): For any service information referenced in EASA AD 2020–0133 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0133, dated June 10, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0133, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0672.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email

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

Issued on July 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16892 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0277; Airspace Docket No. 20–AEA–5]

RIN 2120–AA66

Amendment of Class E Airspace; Pottsville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace extending upward from 700 feet above the surface at Schuylkill County/Joe Zerbey Airport, Pottsville, PA due to the extension of runway 11. This action also updates the geographic coordinates of the airport, and Schuylkill Medical Center Heliport (formerly Pottsville Hospital). Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://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 7400.11D at NARA, email *fedreg.legal@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 Ave, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rule regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Schuylkill County/Joe Zerbey Airport, Pottsville, PA, to support IFR operations in the area.

History

The FAA published a notice of prosed rulemaking in the **Federal Register** (85 FR 33587, June 2, 2020) for Docket No. FAA–2020–0277 to amend Class E airspace extending upward from 700 feet above the surface at Schuylkill County/Joe Zerbey Airport, Pottsville, PA from a 6.8-mile radius to a 7-mile radius. In addition, the FAA proposes to update the airport's geographic coordinates, and the name and geographic coordinates of Schuylkill Medical Center Heliport, to coincide with the FAA's aeronautical database.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Schuylkill County/Joe Zerbey Airport, Pottsville, PA, from a 6.8-mile radius to a 7-mile radius, due to the extension of runway 11. Also, the geographic coordinates of the airport, and the name and geographic coordinates of Schuylkill Medical Center Heliport, are updated to coincide with the FAA's aeronautical database. These changes are necessary for continued safety and management of IFR operations in the area. Subsequent to publication of the NPRM, the FAA found the airport name (Schuylkill County/Joe Zerbey Airport) required modification. This action makes the correction.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, effective September 15, 2019, is amended as follows:

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

* * * * *

AEA PA E5 Pottsville, PA [Amended]

Schuylkill County/Joe Zerbey Airport, PA
(Lat. 40°42′24″ N, long. 76°22′23″ W)
Schuylkill Medical Center Heliport
(Lat. 40°41′25″ N, long. 76°11′32″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Schuylkill County/Joe Zerbey Airport, and that airspace within a 6-mile radius of the point in space for Schuylkill Medical Center Heliport.

Issued in College Park, Georgia, on July 29, 2020.

Matthew N. Cathcart,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–16857 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0353; Airspace Docket No. 19–AWP–19]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace by adding an area, designated as an extension to a Class D or Class E surface area. This action also implements several administrative amendments to the airspace legal descriptions.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://wwWfaa.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 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace at North Las Vegas Airport, Las Vegas, NV, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27180; May 7, 2020) for Docket No. FAA–2020–0353 to amend Class D and Class E airspace at North Las Vegas Airport, Las Vegas, NV. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D, E4, and E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace at North Las Vegas Airport, Las Vegas, NV. This action adds an area, designated as an extension to a Class D or Class E surface area, to the northwest of the airport. The area extends from the airport's Class D airspace. This area is described as follows: That airspace extending upward from the surface within 2 miles each side of the 314° bearing from the airport, extending from the 4.3-mile radius to 13.2 miles northwest of North Las Vegas Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

This action implements several administrative amendments to the airspace legal descriptions for the Class D and Class E airspace extending upward from 700 feet above the surface. The first line of the airspace text headers is updated to ''AWP NV D Las Vegas, NV'' and ''AWP NV E5 Las Vegas, NV'', respectively. The second line of the airspace text headers for both areas is updated to ''North Las Vegas Airport, NV''. The airport's geographic coordinates are updated to lat. 36°12′39″ N, long. 115°11′40″ W. The term ''Airport/Facility Directory'' in the Class D airspace description is updated to ''Chart Supplement''.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP NV D Las Vegas, NV [Amended]

North Las Vegas Airport, NV
(Lat. 36°12′39″ N, long. 115°11′40″ W)

That airspace extending upward from the surface up to but not including 4,500 feet MSL within a 4.3-mile radius of the North Las Vegas Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP NV E4 Las Vegas, NV [New]

North Las Vegas Airport, NV
(Lat. 36°12′39″ N, long. 115°11′40″ W)

That airspace extending upward from the surface within 2 miles each side of the 314° bearing from the airport, extending from the 4.3-mile radius to 13.2 miles northwest of North Las Vegas Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP NV E5 Las Vegas, NV [Amended]

North Las Vegas Airport, NV
(Lat. 36°12′39″ N, long. 115°11′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of North Las Vegas Airport.

Issued in Seattle, Washington, on July 29, 2020.

B.G. Chew,

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

[FR Doc. 2020–16835 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[Docket No. USCBP–2020–0034; CBP Dec. No. 20–13]

RIN 1515–AE46

Fees for Inbound Express Mail (EMS) Items

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

ACTION: Interim final rule.

SUMMARY: U.S. Customs and Border Protection (CBP) is amending its regulations to implement new subsection 13031(b)(9)(D) of the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended by section 8002 of the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act). Among other things, the new subsection establishes a new fee for processing Inbound Express Mail Service items (Inbound EMS items), requires the United States Postal Service to pay a percentage of this fee to CBP on a quarterly basis, provides that Inbound EMS items that are formally entered are also subject to a merchandise processing fee, if applicable, and requires the Secretary of the Treasury to issue regulations regarding USPS's quarterly remittances to CBP. This rule also makes conforming amendments to CBP regulations.

DATES: *Effective date:* This interim final rule is effective on August 4, 2020, except for the amendment to § 24.23(c)(1)(v) which is effective September 3, 2020.

Comment date: Comments must be received on or before October 5, 2020.

ADDRESSES: You may submit comments, identified by docket number, through the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2020–0034.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any

personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

FOR FURTHER INFORMATION CONTACT: Quintin Clarke, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, via email at *Quintin.G.Clarke@cbp.dhs.gov,* or by phone at 202–344–2524.

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Regulatory Amendments

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background and Purpose

In response to the ongoing opioid crisis, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT for Patients and Communities Act), Public Law 115–271 (2018), was enacted on October 24, 2018. In addition to providing resources and support to communities grappling with opioid addiction, the legislation directs the United States Postal Service (USPS) and CBP to take certain actions to help prevent illicit opioids from reaching the United States.

Title VIII, Subtitle A of the SUPPORT for Patients and Communities Act is the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act). Among other things, the STOP Act amends subsection 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c(b)(9)), to add a new paragraph (D) (hereafter referred to as ''new subsection 13031(b)(9)(D)'' or ''new subsection 13031(b)(9)(D) of COBRA''), which requires certain fees for the processing of Inbound Express Mail Service (Inbound EMS) items at international mail facilities. Inbound Express Mail Service refers to the optional postal express service for sending postal items from other countries.[1] CBP is responsible for screening inbound international mail and removing packages with illicit goods (including, but not limited to, opioids) from the mail stream before delivery to intended recipients in the United States.[2] New subsection 13031(b)(9)(D) of COBRA requires a payment of $1 per Inbound EMS item, subject to annual adjustment, for services rendered in screening and processing of Inbound EMS items and, if an Inbound EMS item is formally entered, a payment of the fee provided for under subsection 13031(a)(9) of COBRA, if applicable. The fee provided for under subsection 13031(a)(9) is a merchandise processing fee.[3] Under new subsection 13031(b)(9)(D), USPS must remit 50 percent of the $1 fee per Inbound EMS item that it collects to CBP on a quarterly basis as reimbursement to CBP for processing of Inbound EMS items, and retain the other 50 percent to cover its processing of these items. The new subsection 13031(b)(9)(D) of COBRA requires the Secretary of the Treasury to issue regulations regarding the details of the quarterly remittances.[4]

CBP is amending its regulations to implement the provisions of new subsection 13031(b)(9)(D) pertaining to Inbound EMS items, including the applicable fees, adjustments to the fees, details about the remittances from USPS to CBP and the required supporting documentation. CBP is also amending its regulations to make certain conforming amendments to reflect the provisions of the new subsection 13031(b)(9)(D) of COBRA. First, CBP is amending its regulations to reflect the fact that the subsection 13031(a)(9) merchandise processing fee will apply to Inbound EMS items as provided in the new subsection 13031(b)(9)(D). Second, CBP is amending its regulations to reflect that the dutiable mail fee previously authorized by subsection 13031(a)(6) will no longer apply to Inbound EMS items, based on the amendments made to subsection 13031(a)(6) of COBRA by section 8002(b) of the STOP Act that specifically exclude Inbound EMS items from the dutiable mail fee.

As provided in section 8002(c) of the STOP Act, the amendments made to COBRA by section 8002 of the STOP Act took effect on January 1, 2020. This rule is effective on August 4, 2020, except with respect to the amendments to § 24.23(c)(1)(v) regarding the merchandise processing fee for formally entered Inbound EMS items, which take effect on September 3, 2020.

Further details about these changes are set forth in sections III and IV, below.

III. Fees for Inbound EMS Items Pursuant to New Subsection 13031(b)(9)(D) of COBRA

A. General Requirements

Section 8002 of the STOP Act amended subsection 13031(b)(9) of

[1] Inbound Express Mail Service (Inbound EMS) is defined in new subsection 13031(b)(9)(D) as the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and section 3040.104 of title 39 of the Code of Federal Regulations. Section 2515.6 of the mail classification schedule, issued by the Postal Regulatory Commission, pertains to Inbound EMS. It describes Inbound EMS as Inbound Express Mail services offered pursuant to negotiated services agreements.

[2] In addition to the amendments made to COBRA, section 8003 of the STOP Act amends section 343(a)(3)(K) of the Trade Act of 2002 (19 U.S.C. 1415), to require the Secretary of Homeland Security to issue regulations that require USPS to transmit certain advance electronic data on international mail shipments destined to the United States for risk assessment purposes. The Secretary of Homeland Security will be issuing a separate rule to implement these provisions.

[3] This fee is subject to additional limitations, enumerated in subsection 13031(b).

[4] The remittance provision in new subsection 13031(b)(9) assumes that USPS will be the agency that collects the $1 fee per Inbound EMS item. As discussed in section III.B., USPS will collect this fee from foreign postal operators and USPS will remit CBP's portion of these fees to CBP quarterly in the manner prescribed by CBP.

COBRA (19 U.S.C. 58c(b)(9)), by adding a new paragraph (D) (new subsection 13031(b)(9)(D)), which requires certain fees for the processing of items that are sent to the United States through the international postal network by ''Inbound Express Mail service'' or ''Inbound EMS'' (as that service is described in the mail classification schedule referred to in section 3631 of title 39, United States Code).[5] The initial fee set by Congress is $1 per Inbound EMS item (new subsection 13031(b)(9)(D)(i)(I)), plus an additional amount for Inbound EMS items that are formally entered (new subsection (b)(9)(D)(i)(II)). The Secretary of the Treasury, in consultation with the Postmaster General, may adjust the former amount annually by regulation. The latter amount is the merchandise processing fee provided for under subsection 13031(a)(9) of COBRA, which is subject to annual adjustment under subsection 13031(l) of COBRA. The new section 13031(b)(9)(D) provides that the above amounts shall be the only payments required for reimbursement of CBP for services provided in connection with the processing of an Inbound EMS item. The new subsection 13031(b)(9)(D) requires USPS to remit 50 percent of the $1 fee it collects to CBP on a quarterly basis in accordance with regulations issued by the Secretary of the Treasury. Details about these remittances are provided in section III.B., below. Details about the method for adjusting the $1 fee in new subsection 13031(b)(9)(D)(i)(I) are provided in section III.C., below.

B. USPS Remittances to CBP and Supporting Documentation

The new subsection 13031(b)(9)(D) requires USPS to pay CBP on a quarterly basis 50 percent of the amount of the payments required by new subsection 13031(b)(9)(D)(i)(I)—initially set by Congress at $1 per EMS item—in accordance with regulations prescribed by the Secretary of the Treasury to reimburse CBP for services provided in connection with the processing of Inbound EMS items. USPS is to retain the other 50 percent to reimburse it for services it provided in connection with the processing of Inbound EMS items. New subsection 13031(b)(9)(D) requires that the quarterly remittances from USPS to CBP must be deposited into the Customs User Fee Account and used to reimburse appropriation accounts for amounts paid out of those accounts for the costs incurred by CBP in providing services to international mail facilities. It also provides that the payments retained by USPS with respect to the $1 processing fee for Inbound EMS items are to be used for reimbursement purposes only.

USPS and CBP conferred about the methodology for how these quarterly remittances from USPS to CBP will occur. The agreed upon methodology takes into account the fact that USPS will collect the $1 processing fee per Inbound EMS item from foreign postal operators and that USPS will reimburse CBP after settlement with foreign postal operators has occurred. The quarterly remittances from USPS to CBP will be made as follows: USPS will remit to CBP on a quarterly basis 50 percent of the amount required by new subsection 13031(b)(9)(D)(i)(I) of COBRA, for which settlement with foreign postal operators has occurred. Except for the first remittance, USPS must make such remittances to CBP every calendar quarter to cover preceding calendar quarters. As provided in section 8002(c) of the STOP Act, the amendments to COBRA took effect on January 1, 2020. Accordingly, the first remittance from USPS to CBP is due no later than July 31, 2020. It will cover, at a minimum, the first calendar quarter of 2020.[6] This methodology permits USPS to remit the required amounts after payment is settled with foreign postal operators and allows for standard processing times associated with inter-agency funds transfers. Additionally, CBP is requiring USPS to maintain documentation necessary for CBP to verify the accuracy of the fee calculations and to provide certain supporting documentation with each quarterly remittance.

New subsection 13031(b)(9)(D) does not include any specific requirements pertaining to the payment of the applicable merchandise processing fee, pursuant to subsection 13031(a)(9) of COBRA, for Inbound EMS items that are formally entered.[7] Therefore, CBP will collect this fee in the manner that it ordinarily collects a merchandise processing fee, which is directly from the importer of record.[8]

C. Adjustment of Inbound EMS Fees Pursuant to New Subsection 13031(b)(9)(D)

New subsection 13031(b)(9)(D)(iv) provides that, beginning in fiscal year 2021, the Secretary of the Treasury, in consultation with the Postmaster General, may adjust the amount new subsection 13031(b)(9)(D)(i)(I), initially $1 per Inbound EMS item, no more than once per fiscal year. The adjustment is not to exceed the costs of services provided in connection with the processing of inbound EMS items[9] and must be consistent with the obligations of the United States under international agreements. CBP is incorporating this provision into its regulations. For the reasons noted below, the regulations will provide that this fee is not subject to the annual inflation adjustment requirement in subsection 13031(l) of COBRA.

Subsection 13031(l) of COBRA authorizes the Secretary of the Treasury to adjust the fees established under subsections 13031(a) and (b)(2), (b)(3), (b)(5), (b)(6), (b)(8), and (b)(9) of COBRA at the beginning of each fiscal year to reflect the percentage of the increase in the average of the Consumer Price Index for the preceding 12-month period. Although subsection 13031(l) references subsection 13031(b)(9), as noted above, the new subsection 13031(b)(9)(D) explicitly specifies an alternative procedure for adjustment of the $1 Inbound EMS item fee. In addition, it does not specify that the $1 per Inbound EMS item fee is ''subject to adjustment under subsection (l).'' This is in contrast to all the other provisions that are referenced in subsection 13031(b), which explicitly provide that the respective fees imposed by those provisions are ''subject to adjustment under subsection (l).'' CBP is of the view that by providing a separate and distinct adjustment procedure for the $1 Inbound EMS item fee, and by conspicuously omitting from new subsection 13031(b)(9)(D) any explicit reference to adjustment under subsection 13031(l), the new subsection 13031(b)(9)(D)(iv) is the sole applicable

[5] Section 2515.6 of the mail classification schedule, issued by the Postal Regulatory Commission, pertains to Inbound EMS. As noted above, it describes Inbound EMS as Inbound Express Mail services offered pursuant to negotiated services agreements.

[6] The timing of the first remittance occurring in the third calendar quarter instead of the second calendar quarter is due to the nature of the accounting and interagency payment structure. Thus, while the first remittance must, at minimum, cover the first calendar quarter of 2020, it may also include remittances corresponding to the second calendar quarter of 2020.

[7] 19 CFR 24.23(b)(1) is the regulatory provision for the merchandise processing fee for formally entered items.

[8] 19 U.S.C. 1484(a)(2)(B) is the statutory provision identifying the parties who may qualify as the importer of record for purposes of affecting formal entry. An importer of record may be the owner, purchaser, or consignee of the items, or a duly licensed customs broker authorized to make entry on their behalf. The U.S. Postal Service which carries formally entered EMS items does not qualify as an ''importer of record,'' but the addressee may.

[9] The costs of services include the costs incurred by CBP and USPS for the processing of Inbound EMS items.

adjustment procedure—to the exclusion of the annual inflation adjustment procedures specified in subsection 13031(l) of COBRA. Any adjustment to the $1 fee will be done by regulation. USPS, CBP, and Treasury will consult on such adjustments.

Consistent with subsection 13031(a)'s explicit provision that the fees listed therein are all ''subject to adjustment under subsection (l)'', the annual adjustment under subsection 13031(l) of COBRA will apply to the subsection 13031(a)(9) merchandise processing fee pertaining to formally entered Inbound EMS items.

IV. Explanation of Amendments to CBP Regulations

CBP is amending its regulations to incorporate the fee provisions of new subsection 13031(b)(9)(D) regarding Inbound EMS items and to make the necessary conforming amendments pertaining to the merchandise processing fee and the dutiable mail fee. These amendments are explained in detail below.

Part 24 of Title 19 of the Code of Federal Regulations (CFR) sets forth the CBP regulations regarding customs financial and accounting procedures (19 CFR part 24). Section 24.22 (19 CFR 24.22) describes the customs COBRA user fees for certain services, and when such fees are required and subject to limitations and/or adjustments. Section 24.23 (19 CFR 24.23) sets forth the terms and conditions for when the fees for processing merchandise are required. These two sections will incorporate the fees associated with processing of Inbound EMS items that are subject to the new subsection 13031(b)(9)(D) of COBRA.

A. Definitions

First, CBP is amending the definitions in §§ 24.22 and 24.23 to define the term ''Inbound Express Mail service'' or ''Inbound EMS''. As described in new subsection 13031(b)(9)(D), ''Inbound Express Mail service'' or ''Inbound EMS'' is the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code. The mail classification schedule referred to in section 3631 of title 39, United States Code, is further described in section 3040.104 of title 39 of the Code of Federal Regulations.

B. Inbound EMS Item Processing Fees

CBP is amending § 24.22 to add a new paragraph (l) to incorporate the new processing fees as provided in new subsection 13031(b)(9)(D) of COBRA. Paragraph (l)(1) implements the amendments made in new subsection 13031(b)(9)(D), which require the payment of $1 per Inbound EMS item and, for formally entered Inbound EMS items, an additional merchandise processing fee provided for under subsection (a)(9) of section 13031 of COBRA (19 U.S.C. 58c(a)(9)). Specifically, paragraph (l)(1)(i) requires the payment of $1 per Inbound EMS item, as adjusted in accordance with the terms of paragraph (1)(3), rather than the annual adjustment inflation provided for in 19 CFR 24.22(k). Next, paragraph (l)(1)(ii) requires that if an Inbound EMS item is formally entered, the merchandise processing fee provided in 19 CFR 24.23(b)(1) must be paid.[10]

Paragraph (l)(2) specifies how the remittance of payments required by subsection 13031(b)(9)(D)(i)(I) of COBRA will occur between USPS and CBP. As required by new subsection 13031(b)(9)(D)(iii)(I)(aa) of COBRA, paragraph (l)(2) states that USPS will remit to CBP on a quarterly basis 50 percent of the payments required by paragraph (l)(1) to reimburse CBP for services provided in connection with the processing of Inbound EMS items.[11] Paragraph (l)(2)(i) describes the method of remittance, in which USPS must remit 50 percent of payments required in paragraph (l)(1)(i) for which settlement with foreign postal operators has occurred.

Paragraph (l)(2)(i) requires USPS to make such remittances on a quarterly basis to cover preceding calendar quarters, with the first remittance due no later than July 31, 2020 to cover, at minimum, the first calendar quarter of 2020. Paragraph (l)(2)(ii) requires USPS to maintain documentation necessary for CBP to verify the accuracy of the fee calculations and to provide supporting documentation with its quarterly remittances, which shows: (1) The total quantity of Inbound EMS items for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted; (2) the receiving international mail facility location of each Inbound EMS item for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted; (3) the total amount of payments required by paragraph (l)(1)(i) of this section for which settlement with foreign postal operators has occurred; and (4) for any Inbound EMS items sent to the United States through the international postal network in preceding calendar quarters for which settlement with foreign postal operators concerning the payments required by paragraph (l)(1)(i) of this section has not occurred, the receiving international mail facility location of each such Inbound EMS item and the total quantity of any such Inbound EMS items received at each affected international mail facility location. The above requirements ensure that CBP has the supporting documentation necessary to track USPS's remittances to CBP to ensure that the statutory requirements are met.

Paragraph (l)(3) provides that beginning in fiscal year 2021, the Secretary of the Treasury may adjust by regulation the payments required in (l)(1)(i) after consultation with the Postmaster General. It further provides that such adjustments may be made not more frequently than once per fiscal year, and only to an amount that does not exceed the costs of services provided in connection with the processing of Inbound EMS items and consistent with the obligations of the United States under international agreements.

Finally, with respect to fees, CBP amends § 24.23(c) that pertains to exemptions from the merchandise processing fee. Section 24.23(c) provides exemptions and limitations to when the merchandise processing fee, surcharge, or specific fees provided under section 24.23 will not apply. Among other exemptions, § 24.23(c)(1)(v) currently exempts merchandise imported by mail from the fees in § 24.23. However, pursuant to the newly amended subsection 13031(b)(9)(D)(i)(II) of COBRA, Inbound EMS items that are formally entered are subject to a merchandise processing fee. Thus, CBP is amending § 24.23(c)(1)(v) to exclude formally entered Inbound EMS items from this exemption.

C. Exclusions

To effectuate the new subsection 13031(b)(9)(D)(i) of COBRA, CBP is also amending § 24.22 to exclude the $1 fee per Inbound EMS item from the annual adjustment inflation mechanism provided in § 24.22(k) and exclude Inbound EMS items from the dutiable mail fee in § 24.22(f).

Specifically, CBP is amending the introductory paragraph of § 24.22 to exclude the $1 processing fee contained in the newly added subparagraph (l) from the annual adjustment for inflation

[10] As discussed previously, 19 CFR 24.23(b)(1) is the regulatory provision for formally entered items that is provided for in subsection 13031(a)(9) of COBRA.

[11] For example, USPS must remit fifty cents to CBP and will retain fifty cents for one Inbound EMS item.

provision contained in § 24.22(k) (19 CFR 24.22(k)).[12]

CBP is amending § 24.22(f) to exclude Inbound EMS items from the dutiable mail fee. Current § 24.22(f) provides that the addressee of each item of dutiable mail for which a CBP officer prepares documentation will be assessed a processing fee.[13] This fee is authorized by subsection 13031(a)(6) of COBRA and current section 24.22(f) and is referred to as the dutiable mail fee. CBP is amending § 24.22(f) to conform with the amendment made by section 8002(b) of the STOP Act to subsection 13031(a)(6) of COBRA that specifically excludes Inbound EMS items from the dutiable mail fee. CBP is also amending Appendix A to Part 24 to reflect the numbering change in the dutiable mail fee provision from 24.22(f) to 24.22(f)(1).

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to these requirements ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). For the reasons specified below, CBP has determined that there is good cause to publish this rule without prior notice and comment procedures.

This rule implements the amendments made to subsection 13031(b)(9) of COBRA by section 8002 of the STOP Act. The new subsection 13031(b)(9)(D) of COBRA prescribes the relevant requirements for the new fees for processing Inbound EMS items. Subsection 13031(b)(9)(D) of COBRA establishes the fee amount (initially $1 per item plus the merchandise processing fee if the item is formally entered), what the fees cover (reimbursement for costs incurred in providing services in connection with the processing of Inbound EMS items), the percentage of the fee to be remitted to CBP from USPS (50 percent of the $1 per Inbound EMS item), how often USPS must remit such amounts to CBP (on a quarterly basis), the account in which such payments to CBP are to be deposited (Customs User Fee Account), how often the $1 fee may be adjusted by the Secretary of the Treasury in consultation with the Postmaster General (beginning in fiscal year 2021, and not more frequently than once each fiscal year) and considerations for how such adjustments are to be made (not to exceed the costs of services provided in connection with the processing of Inbound EMS items, consistent with obligations of the United States under international agreements).

As described above, this rule implements the amendments made to subsection 13031(b)(9) of COBRA by section 8002 of the STOP Act, which establish nondiscretionary requirements with respect to payments for the processing of Inbound EMS items at international mail facilities. Virtually all of the substantive provisions regarding the new fees are specifically provided by statute. This rule simply implements those requirements and makes necessary conforming amendments to CBP regulations.[14] The only discretionary matter that was left for regulations was the specific method by which USPS must remit payments to CBP. Since CBP was given very little discretion regarding the implementation of new subsection 13031(b)(9)(D), CBP believes that prior notice and public comment procedure would be impracticable, unnecessary, and contrary to the public interest. Accordingly, CBP finds that there is good cause to issue this rule without prior notice and comment.

CBP has also concluded that this rule is exempt from the prior notice and comment rulemaking procedures under 5 U.S.C. 553(b)(A), which states that such procedures do not apply to ''rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). CBP considers this rule to fall within that exemption, as the rule adopts and implements the substantive requirements under the newly amended subsection 13031(b)(9) of COBRA, as amended by section 8002 of the STOP Act, and simply sets forth the procedures that will apply with regard to certain remittances from USPS to CBP. As discussed above, Congress established the substantive provisions of the fees for processing Inbound EMS items, including the fee amount, method of remittances, authorized uses upon receipt of payment, and discretion to adjust the $1 fee once implemented after a year.

These regulations set forth the statutory requirements and the agency procedures for remitting the payments required under new subsection 13031(b)(9)(D) of COBRA. Specifically, the regulations detail the procedures regarding how USPS will remit the payments required by new subsection 13031(b)(9)(D) of COBRA. These regulations do not impose any obligations or costs to the public, and are procedural in nature.

Although this rule is exempt from the prior notice and comment procedure, CBP is requesting public comments on this interim final rule and will take into account public comments received before issuing a final rule.

B. Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This rule is a ''significant regulatory action,'' although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries are not covered by Executive Order 13771. However, such regulatory actions may impose requirements apart from transfers and, in those cases, the actions would need

[12] The merchandise processing fee applicable to Inbound EMS items that are formally entered will be subject to the annual inflation adjustment methodology in 19 CFR 24.22(k).

[13] The dutiable mail fee under 24.22(f) is subject to the annual inflation adjustment of the Fixing America's Surface Transportation (FAST) Act. The fee for FY 2020 is $5.89. *See* CBP Dec. 19–08 (84 FR 37902).

[14] The nondiscretionary conforming amendments refer to amending CBP regulations to subject Inbound EMS items that are formally entered to the merchandise processing fee under subsection 13031(a)(9) of COBRA, and the amendments made to subsection 13031(a)(6) of COBRA by section 8002(b) of the STOP Act that exclude Inbound EMS items from the dutiable mail fee provided for in that subsection.

to be offset to the extent they impose more than *de minimis* costs.[15] This rule is not expected to be subject to the requirements of Executive Order 13771 because this rule is expected to result in no more than *de minimis* costs. CBP has prepared a regulatory impact analysis of this rule in accordance with Executive Orders 12866 and 13563. CBP is unable to publish the full analysis because it uses proprietary, non-public USPS data. As such, CBP has included the following summary of the analysis to help inform stakeholders of this rule's impacts.

1. Background and Purpose of Rule

As mentioned above, the STOP Act amends the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, 19 U.S.C. 58c(b)(9), to create new subsection 13031(b)(9)(D), which requires certain fees for the screening and processing of Inbound Express Mail Service (Inbound EMS) items at international mail facilities. Express Mail Service refers to the optional express delivery service for international postal items that provides reliable and high-speed service for sending postal items to other countries. USPS is responsible for processing and delivering these items in the United States, while CBP is responsible for screening such items and removing packages with illicit goods from the mail stream before delivery to intended recipients in the United States.

New subsection 13031(b)(9)(D) of COBRA requires a payment of $1 per Inbound EMS item (''Inbound EMS item fee''), subject to annual adjustment, for services rendered in the screening and processing of Inbound EMS items. Under this new subsection, USPS must pay 50 percent of the designated $1 fee per Inbound EMS item that it collects to CBP on a quarterly basis as reimbursement to CBP for processing of Inbound EMS items and retain the other 50 percent to cover its processing of these items. Depending on postal procedures, the $1 Inbound EMS item fee may ultimately be paid by foreign postal operators, shippers, or other entities. New subsection 13031(b)(9)(D) of COBRA also specifies that the *ad valorem* merchandise processing fee (MPF) currently under subsection 13031(a)(9) of COBRA shall be required if applicable to Inbound EMS items that are formally entered; these new implementing regulations will make the MPF applicable to formally entered Inbound EMS items prospectively by removing the current regulatory exemption.[16] With this change, importers of record, who are addressees or addressees' brokers in the inbound mail environment, will be required to now pay an *ad valorem* MPF on any formally entered Inbound EMS items directly to CBP, consistent with current entry and entry summary procedures for other mail fees. For fiscal year (FY) 2020, this *ad valorem* MPF is 0.3464 percent, though it cannot exceed $519.76 and cannot be less than $26.79.[17] These maximum and minimum fee values are determined each fiscal year and published via **Federal Register** notice.

Under existing regulations, CBP also assesses duties, taxes, and fees on applicable Inbound EMS items, including a dutiable mail fee. Currently, all dutiable mail items for which a CBP officer prepared documentation (*i.e.,* formal entries and informal entries subject to duties) are subject to a dutiable mail fee. This dutiable mail fee, which is currently $5.89 and is subject to annual adjustment for inflation, is generally paid by addressees of dutiable Inbound EMS items and other dutiable mail items.[18] When the mail item is delivered by USPS generally for informal entries, the dutiable mail fee generally is collected at the time of delivery of the merchandise, along with any duties and taxes due. CBP may also collect the fee directly from an addressee. The amendments made to COBRA by the STOP Act exclude Inbound EMS items from this dutiable mail fee.

As provided in the STOP Act, the aforementioned amendments to the COBRA fees took effect on January 1, 2020, though not all changes have been implemented. Through this rule, CBP is amending its regulations to implement all of the STOP Act's COBRA amendments that pertain to Inbound EMS items, including statutorily-prescribed fees, adjustments to fees, fee revenue remittances from USPS to CBP, and the elimination of the dutiable mail fee for Inbound EMS items. CBP is also requiring USPS to maintain and provide supporting documentation to the agency to ensure the accuracy of the fee remittances with this rule. Table 1 summarizes the COBRA user fees applicable to Inbound EMS items with and without the COBRA amendments and this rule.

TABLE 1—INBOUND EMS ITEM USER FEES WITH AND WITHOUT THE COBRA AMENDMENTS AND RULE

Inbound EMS item entry type	Without COBRA amendments and rule	With COBRA amendments and rule
Formal Entry (Generally >$2,500 in value).	Dutiable mail fee for dutiable items (FY 2020 fee is $5.89)[19].	$1.00 Inbound EMS item fee and *Ad valorem* MPF of 0.3464 percent (In FY 2020 the maximum amount of the fee cannot exceed $519.76 and cannot be less than $26.79).
Informal Entry[20] (Generally < or = $2,500).	Dutiable mail fee for dutiable items (FY 2020 fee is $5.89).	$1.00 Inbound EMS item fee.

Source: Email communication with CBP's Office of Finance on June 21, 2019. Also *see* 19 CFR 145.12 and *https://help.cbp.gov/app/answers/detail/a_id/121/kw/formal%20entry%20filing/related/1/session/L2F2LzEvdGltZS8xNTY3MTczOTg0L3NpZC81WjVwS0Jubw%3D%3D.* Accessed August 30, 2019.

[15] *See* U.S. Office of Management and Budget's memorandum titled, ''Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

[16] Formally entered items generally include those valued at over $2,500, but they may also include other items with a value less than $2,500, such as commercial shipments containing textiles and apparel and products regulated by other government agencies. MPFs are paid by the importer of record, who are addressees or addressees' brokers in the inbound mail environment. *See* 19 CFR 145.12 and *https://help.cbp.gov/app/answers/detail/a_id/121/kw/formal%20entry%20filing/related/1/session/L2F2LzEvdGltZS8xNTY3MTczOTg0L3NpZC81WjVwS0Jubw%3D%3D.* Accessed August 30, 2019.

[17] *See* CBP Dec. 19–08 (84 FR 37902).

[18] In accordance with the Fixing America's Surface Transportation Act of 2015 (FAST Act), the dutiable mail fee is updated to account for inflation each fiscal year. The FY 2020 fee is $5.89. *See* CBP Dec. 19–08 (84 FR 37902).

[19] *See* CBP Dec. 19–08 (84 FR 37902).

[20] Informal entries may include shipments that are subject to the *de minimis* administrative exemption, which generally exempts from duties and taxes shipments of merchandise imported by one person on one day and having an aggregate fair retail value in the country of shipment of not more than $800 (bona-fide gifts and certain personal and household goods are subject to different requirements in order to qualify for separate administrative exemptions). *See* 19 U.S.C. 1321(a)(2); 19 CFR 10.151 and 145.31. In accordance with the Trade Facilitation and Trade Enforcement Act of 2015, the *de minimis* value changed from $200 to $800 on March 10, 2016. *See https://www.cbp.gov/newsroom/national-media-release/de-minimis-value-increases-800.* Accessed July 24, 2019. *De minimis* shipments will be subject to this rule's Inbound EMS item fee.

2. Historical and Projected Inbound Mail Volumes and Fees

Between FY 2017 and FY 2019, Inbound EMS items slightly declined, while total inbound mail items decreased at a higher rate. During this period, Inbound EMS items represented a small portion of total inbound mail. In the absence of robust data on formally and informally entered inbound mail items, CBP estimates that a small percentage of the total Inbound EMS items delivered between FY 2017 and FY 2019 were formally entered based on subject matter expert input and the FY 2017 to FY 2019 shares of total inbound mail items that were Inbound EMS items.[21] An even smaller number of total inbound mail items between FY 2017 and FY 2019 were dutiable items with dutiable mail fee collections. Without more specific dutiable mail fee data, CBP estimates that the share of total dutiable mail fee items with dutiable mail fee collections between FY 2017 and FY 2019 that corresponded to Inbound EMS items was consistent with the FY 2017 to FY 2019 share of total inbound mail items that were Inbound EMS items. CBP uses the historical Inbound EMS items data and assumptions to project future Inbound EMS items with and without this rule. In the absence of any rulemakings, CBP projects that the volume of Inbound EMS items will continue to decline at its FY 2017 to FY 2019 compound annual growth rate (CAGR) each year under the baseline from FY 2020 to FY 2024 (using FY 2019 as a basis for the initial projection). CBP also projects that the number of Inbound EMS items with dutiable mail fee collections will also decline at the FY 2017 to FY 2019 Inbound EMS item CAGR each year under the baseline from FY 2020 to FY 2024 (using FY 2019 as a basis for the initial projection). Based on the approximate share of Inbound EMS items that were formally entered from FY 2017 to FY 2019, CBP estimates that a small percentage of the projected Inbound EMS item volumes for FY 2020 to FY 2024 will correspond to formal entries.

Based on input from USPS subject matter experts, CBP predicts that the rule's $1 Inbound EMS item fee and the *ad valorem* MPF for Inbound EMS items are likely to lead to decreases in Inbound EMS item volumes; however, the exact amounts of the decreases are unknown.[22] As such, CBP analyzes the impacts of this rule under three Inbound EMS item changes compared to the baseline. Under the first projection method, CBP predicts that the rule will have no impact on future Inbound EMS item volumes relative to the baseline. Thus, CBP projects that the changes in Inbound EMS item volumes with this rule will be the same as those predicted under the baseline, decreasing by a small percentage each year starting from their FY 2019 value. Under the second projection method, CBP projects that Inbound EMS item volumes will decline by a slightly greater percentage point relative to the baseline each year starting from the FY 2019 total volume of Inbound EMS items. Under the third projection method, CBP projects that Inbound EMS item volumes will decline by an even greater additional percentage relative to the baseline each year starting from the FY 2019 total volume of Inbound EMS items. CBP will also no longer assess or collect dutiable mail fees for dutiable Inbound EMS items with this rule, meaning that there will be no corresponding fee collections during the period of analysis with this rule.

CBP is aware that the outbreak of COVID–19 will likely reduce the volume of future inbound mail in the short run. Consequently, using historical growth rates and figures from FY 2017 to FY 2019 to estimate Inbound EMS item volumes for FY 2020 through FY 2024 will not reflect any impacts from the COVID–19 pandemic. It is not clear what level of reductions the pandemic will have on Inbound EMS item volumes or how CBP would estimate such an impact with any precision given available data. Therefore, the Inbound EMS item projections CBP uses in this analysis are expected to be overestimations for the period of analysis, resulting in potential overestimations of this rule's costs and benefits.

3. Transfer Payments From Rule

This rule's $1 Inbound EMS item fee and *ad valorem* MPF for formally entered Inbound EMS items are payments required for the reimbursement to USPS and CBP for services rendered during the screening and processing of Inbound EMS items. In accordance with OMB's Circular A–4 (Regulatory Impact Analysis: A Primer), these fees to government agencies for services rendered are monetary transfers from fee payers to the U.S. Government for costs realized by the U.S. Government (specifically, USPS and CBP).[23] The dutiable mail fee for dutiable Inbound EMS items is also a monetary transfer from fee payers to the U.S. Government, which will be eliminated with this rule.

To calculate this rule's monetary transfers, CBP considered the new or eliminated fee amounts and the projected number of Inbound EMS items respectively subject to these fee changes. In particular, to calculate the total Inbound EMS item fee payments resulting from this rule, CBP multiplied the $1 Inbound EMS item fee by the projected number of Inbound EMS items delivered by USPS from FY 2020 to FY 2024. To determine the *ad valorem* MPF payments from importers of record, who are addressees or addressees' brokers in the inbound mail environment, to the U.S. Government under this rule, CBP used an estimate of the average *ad valorem* MPF assessed for each formally entered Inbound EMS item multiplied by the projected number of formally entered Inbound EMS items over the period of analysis. In the absence of robust data on the value of formally entered Inbound EMS items, CBP estimated that the average MPF assessed for each formally entered Inbound EMS item will be equal to the minimum MPF for FY 2020 of $26.79 between FY 2020 and FY 2024.[24] To measure the total amount of forgone dutiable mail fee transfer payments from addressees of dutiable Inbound EMS items to the U.S. Government, CBP multiplied the FY 2020 dutiable mail fee of $5.89 by the projected number of Inbound EMS items that will be subject to the dutiable mail fee under the baseline from FY 2020 to FY 2024. According to these calculations, the U.S. Government will enjoy an undiscounted net transfer payment from fee payers of at least $54.3 million from this rule between FY 2020 and FY 2024 according to the

[21] Source: Email communication with CBP's Office of Trade on June 24, 2019; August 7, 2019; and September 10, 2019, and email communication with CBP's Office of Field Operations on September 10, 2019.

[22] Source: Email communication with USPS on May 7, 2020.

[23] Source: U.S. Office of Management and Budget. Circular A–4. *Regulatory Impact Analysis: A Primer.* Available at *https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf.* Accessed July 24, 2019.

[24] CBP based this estimate on U.S. Department of Transportation data on the total value of merchandise imported via multiple modes and mail for 2018 and USPS data on the total number of inbound mail shipments for FY 2018. CBP found that the average merchandise value of inbound mail shipment was less than the MPF of $26.79 that will generally be applicable to Inbound EMS items formally entered under this rule; hence, the minimum MPF fee of $26.79 will apply. Source of merchandise value data: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration. Freight Analysis Framework, version 4.5.1, 2019. ''Value of shipments by transportation mode'' table. Trade type: Imports, Mode: Multiple Modes and Mail, 2018. Available at *https://www.bts.gov/faf.* Accessed May 7, 2020.

projection method used (see Table 2). When discounted, this net transfer payment equals at least $47.9 million in present value and at least $10.9 million on an annualized basis (using a 7 percent discount rate; see Table 2). To the extent that fee payers make more (fewer) transfer payments to the U.S. Government with this rule than estimated, the actual net transfers to the U.S. Government will be higher (lower).

TABLE 2—TOTAL POTENTIAL MONETIZED PRESENT VALUE AND ANNUALIZED NET TRANSFER PAYMENTS OF RULE, FY 2020–FY 2024

[2020 U.S. Dollars]

		3% Discount rate		7% Discount rate	
	Undiscounted	Present value	Annualized	Present value	Annualized
Total Net Transfer Payment from Fee Payers to U.S. Government:					
Projection Method 1 *	.....	.....	.....	.....	.....
Projection Method 2	$57,735,540	$54,527,317	$11,559,504	$50,783,914	$11,575,443
Projection Method 3	54,342,534	51,385,168	10,893,385	47,931,993	10,925,390

* These estimates were excluded from the table for commercial sensitivity reasons.
Note: The estimates in this table are contingent upon CBP's projections as well as the discount rates applied.

4. Costs and Benefits of Rule

Together with transfer payments, this rule will introduce costs to USPS, CBP, and fee payers. USPS will incur initial costs to set up accounts to collect the new $1 Inbound EMS item fee and to remit a portion of the fee to CBP. USPS does not currently have estimates for the one-time costs that this new collection and remittance process will impose. However, because USPS already collects and processes other inbound mail fees, including some CBP-specific fees, CBP expects the cost of collecting and remitting an additional fee payment to be minimal. Along with these one-time costs, USPS will sustain recurring costs from this rule's requirement for USPS to maintain and provide supporting documentation to CBP to ensure the accuracy of the $1 Inbound EMS item fee remittances. The supporting documentation should show Inbound EMS item volume data as well as Inbound EMS item fee collections that are being remitted to CBP and outstanding balances. USPS must provide this documentation to CBP on a quarterly basis. This requirement will also likely impose a minimal burden on USPS.[25]

CBP's Office of Finance will experience some time burdens associated with the review of USPS's $1 Inbound EMS item fee documentation. CBP staff will have to match supporting documentation provided by USPS with funds remitted to CBP. There will also be periodic audits by CBP's Regulatory Audit and Agency Advisory Services Directorate to ensure Inbound EMS item volumes reported by USPS and the funds remitted to CBP match the volumes indicated in CBP's system. CBP will conduct these reviews and audits in conjunction with other remittance reviews and audits. CBP estimates that the monetized time burden of these reviews and audits will be very small each year.[26] As such, this Inbound EMS item user fee documentation review and auditing will not meaningfully affect CBP operations.

With this rule, CBP processing of Inbound EMS items will largely remain the same, except CBP will now collect an *ad valorem* MPF for each formally entered Inbound EMS item and CBP will no longer assess the dutiable mail fee on Inbound EMS items. CBP will now collect the *ad valorem* MPF on formally entered items consistent with existing entry and entry summary procedures for other mail fees. Likewise, CBP officers at international mail facilities will ensure the payment of this MPF electronically in the same manner as other items currently subject to MPF and related duties, taxes, and fees. Thus, CBP does not believe that the collection of the *ad valorem* MPF for formally entered Inbound EMS items will impose an added processing time burden on CBP.[27] CBP also does not believe that the rule's elimination of the dutiable mail fee for Inbound EMS items will generally result in time savings to CBP.[28]

In addition to the U.S. Government, CBP estimates that this rule's new fee collections will impose nominal time burdens on fee payers, as they will generally pay the fees with other duties, taxes, and fees currently assessed on their Inbound EMS items.

Besides enabling CBP and USPS to comply with the amendments made to COBRA by the STOP Act, CBP believes this rule will produce negligible benefits.

5. Summary

In summary, this rule will mostly result in transfer payments between fee payers and the U.S. Government (specifically, USPS and CBP). On net, payers will transfer at least an estimated $10.9 million in annualized fee payments to the U.S. Government from FY 2020 to FY 2024 (using a 7 percent discount rate). These estimates are based on historical growth rates and shares. The transfer payments resulting from this rule could be understated if future inbound mail volumes increase more than estimated, or they could be overstated if future inbound mail volumes decrease more than estimated, like during the COVID–19 pandemic. To the extent that fee payers make more (fewer) transfer payments to the U.S. Government with this rule than estimated, the actual net transfers to the U.S. Government from this rule will be higher (lower). USPS, CBP, and fee payers will likely incur minimal costs from this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary

[25] Source: Communication with USPS on September 20, 2019.

[26] Source: Email communication with CBP's Office of Finance on July 25, 2019.

[27] Source: Communication with CBP's Office of Field Operations on September 9, 2019.

[28] Source: Communication with CBP's Office of Field Operations on September 9, 2019.

for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. This IFR imposes a burden on a partner government agency, USPS, and as such, the provisions of the Act do not apply to this rule. Therefore, CBP has determined that there is no collection of information which requires a control number assigned by the Office of Management and Budget.

F. Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

Amendments to the Regulations

For the reasons set forth above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues and the separate authority citations for §§ 24.22 and 24.23 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.22 also issued under Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Pub. L. 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

Section 24.23 also issued under 19 U.S.C. 3332; Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Pub. L. 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

* * * * *

■ 2. Amend § 24.22 by:

■ a. In the introductory text, adding the words ''Except as provided in paragraph (1)(1)(i) of this section,'' to the beginning of the second sentence;

■ b. Adding paragraph (a)(5);

■ c. Revising paragraph (f);

■ d. Adding paragraph (l).

The additions and revision read as follows:

§ 24.22 Fees for certain services.

(a) * * *

(5) The term *Inbound Express Mail service* or *Inbound EMS* means the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and 39 CFR 3040.104.

* * * * *

(f) *Fee for dutiable mail*—(1) *Dutiable mail other than Inbound EMS items.* Except as provided in paragraph (f)(2) of this section, the addressee of each item of dutiable mail for which a CBP officer prepares documentation will be assessed a processing fee in the amount of $5.50, as adjusted in accordance with the terms of paragraph (k) of this section. When the merchandise is delivered by the Postal Service, the fee will be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with any duty and taxes due. When CBP collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(2) *Dutiable Inbound EMS items.* The fee specified in paragraph (f)(1) of this section does not apply to dutiable Inbound EMS items.

* * * * *

(l) *Fees for Inbound Express Mail service (Inbound EMS) items.* (1) *Amounts.* As provided in subsection (b)(9)(D) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended by section 8002 of the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act of 2018) (19 U.S.C. 58c(b)(9)(D)), with respect to the processing of items that are sent to the United States through the international postal network by 'Inbound Express Mail service' or 'Inbound EMS', the following payments are required:

(i) $1 per Inbound EMS item, as adjusted in accordance with the terms of paragraph (l)(3) of this section, and

(ii) If an Inbound EMS item is formally entered, the fee provided for under § 24.23(b)(1).

(2) *Remittances from United States Postal Service to CBP.* As provided in subsection (b)(9)(D) of section 13031 of the COBRA, as amended by section 8002 of the STOP Act of 2018 (19 U.S.C. 58c(b)(9)(D)), United States Postal Service must remit to CBP on a quarterly basis 50 percent of the payments required by paragraph (l)(1)(i) of this section, to reimburse CBP for customs services provided in connection with the processing of Inbound EMS items. United States Postal Service will retain 50 percent of the amounts of the payments required by paragraph (l)(1)(i) of this section, to reimburse the Postal Service for services provided in connection with the processing of Inbound EMS items.

(i) *Method of Remittance.* United States Postal Service must remit to CBP, on a quarterly basis, 50 percent of the payments required by paragraph (l)(1)(i) of this section for which settlement with foreign postal operators has occurred. Except for the first remittance, United States Postal Service must make such remittances to CBP every calendar quarter to cover preceding calendar quarters. The first remittance to CBP, due no later than July 31, 2020, must at a minimum cover the first calendar quarter of 2020.

(ii) *Supporting Documentation.* United States Postal Service must maintain documentation necessary for CBP to verify the accuracy of the fee calculations. With each quarterly remittance to CBP, United States Postal Service must provide a supporting document that shows:

(A) The total quantity of Inbound EMS items for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;

(B) The receiving international mail facility location of each Inbound EMS item for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;

(C) The total amount of payments required by paragraph (l)(1)(i) of this section for which settlement with foreign postal operators has occurred; and

(D) For any Inbound EMS items sent to the United States through the international postal network in preceding calendar quarters for which settlement with foreign postal operators concerning the payments required by paragraph (l)(1)(i) of this section has not occurred, the receiving international

mail facility location of each such Inbound EMS item and the total quantity of any such Inbound EMS items received at each affected international mail facility location.

(3) *Adjustment of User Fee for Inbound Express Mail items.* Beginning in fiscal year 2021, the Secretary of the Treasury, in consultation with the Postmaster General, may adjust by regulation, not more frequently than once each fiscal year, the amount described in paragraph (l)(1)(i) of this section to an amount not to exceed the costs of services provided in connection with the customs processing of Inbound EMS items, consistent with the obligations of the United States under international agreements.

■ 3. Amend § 24.23 by:

■ a. Adding paragraph (a)(6); and

■ b. Revising paragraph (c)(1)(v).

The addition and revision read as follows:

§ 24.23 Fees for processing merchandise.

(a) * * *

(6) *Inbound Express Mail service* or *Inbound EMS. Inbound Express Mail service* or *Inbound EMS* means the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and 39 CFR 3040.104.

* * * * *

(c) * * *

(1) * * *

(v) Merchandise described in General Note 19, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail, other than Inbound EMS items that are formally entered on or after September 3, 2020

* * * * *

Appendix A to Part 24 [Amended]

■ 4. In Appendix A to Part 24 amend the entry for (a)(6) by removing, in the second column, ''(f) and adding in its place ''(f)(1)''.

Dated: July 15, 2020.

Mark A. Morgan,

Chief Operating Officer and Senior Official Performing the Duties of Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2020–15663 Filed 8–3–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9896]

RIN 1545–BO53

Rules Regarding Certain Hybrid Arrangements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations Treasury Decision 9896 that were published in the **Federal Register** on Wednesday, April 8, 2020. The final regulations providing guidance regarding hybrid dividends and certain amounts paid or accrued pursuant to hybrid arrangements, which generally involve arrangements whereby U.S. and foreign tax law classify a transaction or entity differently for tax purposes.

DATES: This correction is effective on August 4, 2020.

FOR FURTHER INFORMATION CONTACT: Tracy Villecco at (202) 317–6933 or Tianlin (Laura) Shi at (202) 317–6936 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9896) that are the subject of this correction are issued under section 267A of the Code.

Need for Correction

As published April 8, 2020, the final regulations (TD 9896) contained an error that need to be corrected.

Correction of Publication

Accordingly, the final regulations (TD 9896), that are the subject of FR Doc. 2020–05924, are corrected as follows:

■ On page 19817, the first column, the fifth line of the fourth paragraph, the language ''the use CFCs'' is corrected to read ''the use of CFCs''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–15940 Filed 8–3–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2018–0486]

RIN 1625–AA00, 1625–AA08, 1625–AA11, and 1625–AA87

Revisions to Notification Procedures for Limited Access Areas and Regulated Navigation Areas and Removal of Certain Marine Event and Limited Access Area Regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising portions of our general regulation on the notification procedures for the establishment and disestablishment of limited access areas and regulated navigation areas, to reflect current organizational procedures. This rule also removes certain marine event and limited access area regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts because they are no longer needed.

DATES: This final rule is effective September 3, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0486 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Courtney Mallon, U.S. Coast Guard; telephone 202–372–3758, email *courtney.mallon@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LNG Liquefied natural gas
OMB Office of Management and Budget
§ Section
U.S.C. United States Code

II. Basis and Purpose, and Regulatory History

The Coast Guard is removing certain marine event and limited access area regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts. The changes remove regulations for events that are no longer held or regulations that are no longer needed to ensure the safety of participants and the public. As part of this rulemaking, the Coast Guard is also revising our regulation on the notification procedures for the establishment and disestablishment of limited access areas and regulated navigation areas. These amendments reflect changes in agency administrative process and provide increased transparency and clarity. The Coast Guard identified these proposed changes as part of the agency's deregulation effort under Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process), and associated guidance issued in 2017.

The Coast Guard issued a notice of proposed rulemaking for this action on March 9, 2020, at 85 FR 13598, in which we invited public comment on the proposal. The comment period closed on April 8, 2020. We received no comments on the proposal.

The Coast Guard is conducting this rulemaking under the authority of 46 U.S.C. 70041 in regard to changes to 33 CFR part 100; and 46 U.S.C. 70034 in regard to changes to 33 CFR part 165. The Secretary of the Department of Homeland Security (DHS) has delegated authority to exercise general powers for the purpose of executing duties and functions of the Coast Guard to the Commandant via Department of Homeland Security Delegation No. 0170.1(II)(23). The Secretary has delegated ports and waterways authority, with certain reservations not applicable here, to the Commandant via DHS Delegation No. 0170.1(II)(70). The Commandant has further redelegated these authorities within the Coast Guard as described in 33 CFR 1.05–1.

III. Discussion of the Rule

As stated above, we received no comments on the notice of proposed rulemaking for this action published March 9, 2020 at 85 FR 13598. We are issuing, without change, the rule as we described it in the notice of proposed rulemaking.

A. 33 CFR Part 100—Safety of Life on Navigable Waters

Ninth District

The Coast Guard is removing a recurring Ninth Coast Guard District special local regulation in 33 CFR 100.905 for the ''Door County Triathlon; Door County, WI.'' The Door Country Triathlon event is located in a low traffic, safe harbor with no commercial traffic. The safe harbor has no public access outside of the event start and finish areas controlled by the event sponsor. The surrounding water access is private property; there is no public access for uncontrolled spectators. Removal of the regulation will not affect public safety. The local sheriff and Department of Natural Resources are normally on scene and boating traffic in the area is recreational only.

Thirteenth District

The Coast Guard is removing 33 CFR 100.1308, ''Special Local Regulation; Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility.'' Section 100.1308 describes three restricted areas. The Lake Sammamish and Dyes Inlet areas, which are covered by 33 CFR 100.1308(a)(1) and (3), have not been in use for over 3 years. Although events still occur in the Lake Washington area, which are covered by 33 CFR 100.1308(a)(2), removing this regulation will not affect the safety of participants or spectators because those events are also covered by 33 CFR 100.1301, ''Seattle seafair unlimited hydroplane race.''

B. 33 CFR Part 165—Regulated Navigation Areas and Limited Access Areas

General Regulations

The Coast Guard is amending the general notice provisions for regulated navigation areas and limited access areas by removing paragraph (c) from 33 CFR 165.7. The removal of paragraph (c) eliminates the statement that notification of termination of a safety zone, security zone, or regulated navigation area is usually made in the same form as notification of its establishment. This does not change how, in practice, the Coast Guard notifies the public of regulated navigation areas and limited access areas.

The regulations in 33 CFR part 165 are established through rulemaking which involves one or more documents being published in the **Federal Register**. In certain situations, a rule will be issued and made effective before it can be published in the **Federal Register**. The Coast Guard will continue to provide notification of safety zone, security zone, and regulation navigation area regulations in accordance with 33 CFR 165.7(a)—generally by **Federal Register** publication and supplemental notification via marine broadcasts, local notice to mariners, and local media. The elimination of paragraph (c) is to account for the fact that the language of the paragraph—specifically the use of the term ''termination''—is ambiguous. It could mean either the end of the rule's effective period or the end of the rule's enforcement period.

In the event that a marine event terminates earlier than expected, the local COTP will often make the decision to terminate enforcement of the zone(s) before the close of the rule's stated effective period. While the potential for this course of action is discussed in the implementing rulemaking document, there is typically not time to publish a statement in the **Federal Register** that such enforcement has ceased. Rather, in actual practice, this information is communicated through marine broadcasts, local notice to mariners, or other means known to be routinely referenced by the local marine community. Also, the same methods will be used to announce that a not-yet-published rule has been issued to end the effective period of the initial rule.

Seventeenth District

The Coast Guard is removing 33 CFR 165.1709, ''Security Zones; Liquefied Natural Gas Tanker Transits and Operations at Phillips Petroleum LNG Pier, Cook Inlet, AK.'' The liquefied natural gas (LNG) terminal in Cook Inlet has ceased operations for the foreseeable future. No tankers have called on it since 2015. In the event that LNG vessel traffic resumes to Cook Inlet, a new rule would be appropriate.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). A regulatory analysis (RA) follows.

The Coast Guard is revising its regulations to provide updates and clarifications to existing regulatory text in 33 CFR parts 100 and 165. The revisions include administrative changes such as clarifying edits to general regulations on notice of termination of areas regulated under 33 CFR part 165, and the removal of a special local regulation no longer needed for safety, a special local regulation for an event that is no longer held, and a security zone for a facility that has ceased operations. Normal navigation rules sufficiently cover the safety of participants and spectators at events that are no longer suitable for coverage under a special local regulation. This rule does not impose any additional costs on the public, maritime industry, or the government. The qualitative benefit of these changes is an increase in the clarity of regulations created by editorial corrections, the removal of expired enforcement periods, and the removal of events that are no longer held.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

This rule does not have any economic impact on vessel owners or operators, or any other maritime industry entity. The changes include administrative changes relating to internal agency practices and procedures. The rule does not have a significant economic impact on any small entities. Therefore, 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.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards and Incorporation by Reference

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management 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 made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. 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.

This rule is categorically excluded under paragraphs L54, L55, and L61 of Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1.[1] Paragraph L54 pertains to promulgation of regulations that are editorial or procedural; paragraph L55 pertains to internal agency functions; and paragraph L61 pertains to special local regulations issued in conjunction with a regatta or marine parade. This rule revises general rulemaking regulations and also amends the field regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts by incorporating updates and clarifications to existing regulatory text in 33 CFR parts 100 and 165.

These changes were identified as part of the Coast Guard's deregulation identification process required by Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process), and associated guidance issued in 2017. All of the changes are consistent with the Coast Guard's maritime safety and stewardship missions.

List of Subjects

33 CFR Part 100

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

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 parts 100 and 165 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 1.05–1.

§ 100.905 [Removed]

■ 2. Remove § 100.905.

§ 100.1308 [Removed]

■ 3. Remove § 100.1308.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 4. 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.

§ 165.7 [Amended]

■ 5. Amend § 165.7 by removing paragraph (c).

§ 165.1709 [Removed]

■ 6. Remove § 165.1709.

Dated: July 22, 2020.

R.V. Timme,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2020–16334 Filed 8–3–20; 8:45 am]

BILLING CODE 9110–04–P

[1] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0414]

RIN 1625–AA00

Emergency Safety Zone; Lower Mississippi River, Rosedale, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for emergency purposes for all waters of the Lower Mississippi River (LMR), extending from River Mile Marker (MM) 594.0 to MM 597.0. The emergency safety zone is needed to protect persons, property, infrastructure, and the marine environment from the potential safety hazards associated with the emergency dredging operations being conducted between MM 595.0 and MM 596.0, in the vicinity of the Victoria Bend Dikes, Rosedale, Mississippi. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from August 4, 2020 through August 5, 2020, or until all dredge work is complete, whichever occurs earlier. For the purposes of enforcement, actual notice will be used from July 22, 2020 through August 4, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0414 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 LT Adam J. Paz, U.S. Coast Guard; telephone 901–521–4825, email *adam.j.paz@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
LMR Lower Mississippi River
MM River Mile Marker
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 shoaling and falling water levels in the vicinity of Victoria Bend has greatly reduced the width of the navigable channel, impeding the safe navigation of vessel traffic and immediate action is needed to protect persons and property. Completing the full NPRM process is impracticable because we must establish this safety zone by July 22, 2020.

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 and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with emergency dredging operations.

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) Lower Mississippi River (LMR) has determined that potential hazards associated with emergency dredging operations in the vicinity of Victoria Bend starting July 22, 2020, will be a safety concern for anyone within a mile radius of the dredging vessel and machinery. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the LMR within the safety zone while the dredge vessel is in operation.

IV. Discussion of the Rule

This rule establishes a temporary emergency safety zone from July 22, 2020 through August 5, 2020, or until all dredge work is complete, whichever occurs earlier. The safety zone will cover all waters of the LMR from MM 594.0 to MM 597.0, extending the entire width of the river. The duration of the zone is intended to protect persons, property, infrastructure, and the marine environment in these navigable waters while the dredge vessel is in operation. No vessel or person will be 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. This emergency safety zone will temporarily restrict navigation on the LMR from MM 594.0 to MM 597.0 in the vicinity of Rosedale, Mississippi, from July 22, 2020 through August 5, 2020, or until all dredge work is complete, whichever occurs earlier, during daylight hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 informing the public of the times that the zone will be activated, and the rule would allow vessels to seek permission to enter the zone on a case-by-case basis.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary emergency safety zone on the LMR from MM 594.0 to MM 597.0, that will prohibit entry into this zone unless permission has been granted by the COTP Lower Mississippi or a designated representative. The safety zone will only be enforced during daylight hours while dredging operations preclude the safe navigation of the established channel. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0414 to read as follows:

§ 165.T08–0414 Emergency Safety Zone; Lower Mississippi River, Rosedale, MS.

(a) *Location.* The following area is a safety zone: All waters of the Mississippi River from MM 594.0 to MM 597.0.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone or email. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced as needed during daylight hours from July 22, 2020 through August 5, 2020, or until all dredge work is complete, whichever occurs earlier. Periods of activation will be promulgated by Broadcast Notice to Mariners.

Dated: July 20, 2020.

R.S. Rhodes,

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

[FR Doc. 2020–16038 Filed 8–3–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2019–0609; FRL–10012–54–Region 9]

Maintenance Plan and Redesignation Request for the Ajo PM_{10} Planning Area; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the ''Ajo PM_{10} Redesignation Request and Maintenance Plan (May 3, 2019)'' (''Ajo PM_{10} Maintenance Plan'' or ''Plan'') as a revision to the state implementation plan (SIP) for the State of Arizona. The Ajo PM_{10} Maintenance Plan includes, among other elements, an emissions inventory consistent with attainment, a maintenance demonstration, contingency provisions, and a demonstration that contributions from motor vehicle emissions to PM_{10} in the Ajo planning area are insignificant. The EPA is also approving the State of Arizona's request to redesignate the Ajo planning area from nonattainment to attainment for the national ambient air quality standards (NAAQS or ''standards'') for particulate matter of ten microns or less (PM_{10}). Lastly, the EPA is taking final action to delete the area designation for Ajo for the revoked NAAQS for total suspended particulate (TSP) because the designation is no longer necessary. The EPA is finalizing these actions because the SIP revision meets the applicable requirements under the Clean Air Act (CAA or ''Act'') for maintenance plans and because the State has met the requirements under the Act for redesignation of a nonattainment area to attainment with respect to the Ajo planning area.

DATES: This rule is effective on September 3, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0609. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3877, or by email at *graham.ashleyr@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Summary of Proposed Action
II. Public Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Summary of Proposed Action

On June 4, 2020 (85 FR 34381), under CAA section 110(k)(3), the EPA proposed to approve the Ajo PM_{10} Maintenance Plan submitted by the Arizona Department of Environmental Quality (ADEQ) on May 10, 2019, as a revision to the Arizona SIP.[1] In so doing, we found that the Ajo PM_{10} Maintenance Plan adequately demonstrates that the area will maintain the PM_{10} NAAQS for 10 years beyond redesignation and includes sufficient contingency provisions to promptly correct any violation of the PM_{10} standards that occurs after redesignation, and thereby meets the requirements for maintenance plans under CAA section 175A. We also proposed to approve the attainment inventory as meeting the requirements of CAA section 172(c)(3), and to approve the demonstration that the PM_{10} contributions from motor vehicle emissions to PM_{10} in the Ajo planning area are insignificant.

In our June 4, 2020 proposed rule, under CAA section 107(d)(3)(D), we proposed to grant the ADEQ's request to redesignate the Ajo PM_{10} planning area from ''nonattainment'' to ''attainment'' for the PM_{10} standards. We proposed to do so based on our conclusion that the Ajo planning area has attained the PM_{10} standards based on the most recent three-year period (2017–2019) of quality-assured, certified, and complete PM_{10} data; that the relevant portions of the Arizona SIP are, or will be as part of this action, fully approved; that the improvement in air quality is due to permanent and enforceable emissions reductions; [2] that Arizona has met all requirements applicable to the Ajo planning area with respect to section 110 and part D of the CAA if we finalize our approval of the attainment inventory in the Ajo PM_{10} Maintenance Plan; that based on our proposed approval as described above, the Ajo PM_{10} Maintenance Plan meets the requirements for maintenance plans under section 175A of the CAA; and that therefore, Arizona has met the criteria for redesignation under CAA section 107(d)(3)(E) for the Ajo PM_{10} planning area.

Lastly, we proposed to delete the area designation for Ajo for the revoked NAAQS for TSP.

Please see our June 4, 2020 proposed rule for a detailed discussion of the background for these actions, and the rationale for approval of the Ajo PM_{10} Maintenance Plan, for granting the ADEQ's request for redesignation of the Ajo planning area to attainment, and for deleting the TSP designation for Ajo.

II. Public Comments

Our June 4, 2020 proposed rule provided a 30-day public comment period that closed on July 6, 2020. We received one comment during this period from the Pima Association of Governments supporting our proposal to find that the Ajo PM_{10} Maintenance Plan adequately demonstrates that PM_{10} contributions from motor vehicle emissions to the PM_{10} air quality problem in the Ajo nonattainment area are insignificant.

III. Final Action

Under CAA section 110(k)(3), and for the reasons set forth in our June 4, 2020 proposed rule, the EPA is taking final action to approve the Ajo PM_{10} Maintenance Plan as a revision to the Arizona SIP. The EPA finds that the maintenance demonstration showing how the area will continue to attain the 24-hour PM_{10} NAAQS for 10 years beyond redesignation, and the contingency provisions describing the actions that the ADEQ will take in the event of a future monitored violation, meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. The EPA is also approving the attainment inventory as meeting the requirement of CAA section 172(c)(3), and the demonstration that the PM_{10} contributions from motor vehicle emissions to PM_{10} in the Ajo planning area are insignificant.

Second, under CAA section 107(d)(3)(D), we are taking final action to grant ADEQ's request, which accompanied the submittal of the maintenance plan, to redesignate the Ajo PM_{10} nonattainment area to attainment for the 24-hour PM_{10} NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our determination that the area has attained the 24-hour PM_{10} NAAQS; that relevant portions of the Arizona SIP are, or will be as part of this action, fully approved; that the improvement in air quality is due to permanent and enforceable reductions in emissions; that Arizona has met all requirements applicable to the Ajo PM_{10} planning area with respect to section 110 and part D of the CAA upon final approval of the attainment inventory in the Ajo PM_{10} Maintenance Plan; and based on our approval (as part of this action) of the Ajo PM_{10} Maintenance Plan.

Lastly, the EPA is taking final action to delete the area designation for Ajo for the revoked national standards for TSP because the designation is no longer necessary.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographic area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve a state plan and redesignation request as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities

[1] ADEQ submitted the Ajo PM_{10} Maintenance Plan electronically to the EPA on May 10, 2019. ADEQ's transmittal letter for the Ajo PM_{10} Maintenance Plan is dated May 8, 2019.

[2] As discussed in our proposal, the Pima County Board of Supervisors adopted Pima County Code (PCC) Section 17.16.125 (''Inactive Mineral Tailings Impoundment and Slag Storage Area within the Ajo PM_{10} Planning Area'') to provide for continued maintenance and enforcement of measures already implemented to control windblown dust from the tailings impoundment and slag storage area (85 FR 34381, 34382). On June 23, 2020, the Region IX Regional Administrator signed a final rule approving PCC Section 17.16.125 as a revision to the Arizona SIP. The signed final rule has not yet been published in the **Federal Register**, but upon its effective date, the requirements therein will become permanent and enforceable for the purposes of CAA section 107(d)(3)(E)(iii).

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, there are no areas of Indian country within the Ajo planning area, and the state plan is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, affect any existing sources of air pollution on tribal lands, nor impair the maintenance of NAAQS in tribal lands.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: July 17, 2020.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends Chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

■ 2. In § 52.120 amend paragraph (e) by adding to table 1, under the table heading ''Part D Elements and Plans (Other than for the Metropolitan Phoenix or Tucson Areas)'' an entry for ''SIP Revision: Ajo PM_{10} Redesignation Request and Maintenance Plan (May 3, 2019) (excluding Appendix C)'' after the entry for ''Arizona State Implementation Plan Revision: Miami Sulfur Dioxide Nonattainment Area for the 2010 SO_2 NAAQS, excluding Appendix D'' to read as follows.

§ 52.120 Identification of plan.

* * * * *

(e) * * *

TABLE 1—EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively] [1]

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
*	*	*	*	*
Part D Elements and Plans (Other than for the Metropolitan Phoenix or Tucson Areas)				
*	*	*	*	*
SIP Revision: Ajo PM_{10} Redesignation Request and Maintenance Plan (May 3, 2019) (excluding Appendix C).	Ajo PM_{10} Air Quality Planning Area.	May 10, 2019.	August 4, 2020, [Insert **Federal Register** citation].	Appendix C includes Pima County Code (PCC) Section 17.16.125 and the related public process documentation. PCC Section 17.16.125 was approved in a separate action and is listed in table 7 of 40 CFR 52.120(c). ADEQ's submittal letter date is the same as the date of adoption, May 8, 2019. Submitted electronically on May 10, 2019.

TABLE 1—EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES—Continued

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively] [1]

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
*	*	*	*	*

[1] Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 4. Section 81.303 is amended by:

■ a. Removing in the table under ''Arizona—TSP,'' the entry for ''Ajo'';

■ b. Revising in the table under ''Arizona—TSP,'' the entry for ''Rest of State''; and

■ c. Revising in the table under ''Arizona—PM–10,'' the entry under Pima County for ''Ajo planning area''.

The revisions read as follows:

§ 81.303 Arizona.

ARIZONA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
*	*	*	*	*
Rest of State [2]				[1] X

[1] EPA designation replaces State designation.
[2] Excluding Ajo (T12S, R6W).

* * * * *

ARIZONA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
*	*	*	*	*
Pima County:				
*	*	*	*	*
Ajo planning area Township T12S, R6W, and the following sections of Township T12S, R5W: a. Sections 6–8. b. Sections 17–20, and. c. Sections 29–32.	September 3, 2020	Attainment.		
*	*	*	*	*

* * * * *

[FR Doc. 2020–15970 Filed 8–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R04–OW–2016–0354; FRL–10012–27–Region 4]

Ocean Dumping: Modification of an Ocean Dredged Material Disposal Site Offshore of Mobile, Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a rule that modifies the existing EPA-designated ocean dredged material disposal site (ODMDS) offshore of Mobile, Alabama (referred to hereafter as the existing Mobile ODMDS), pursuant to the Marine Protection, Research and Sanctuaries Act of 1972, as amended (MPRSA). The primary purpose for the

site modification is to enlarge the site to serve the long-term need for a location to dispose of suitable material dredged from the Mobile Harbor Federal navigation channel, and for the disposal of suitable dredged material for persons who receive a MPRSA permit for such disposal from other sites within Mobile Bay/Port of Mobile. The modified site will be subject to monitoring and management to ensure continued protection of human health and the marine environment.

DATES: This final rule is effective on September 3, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R04–OW–2016–0354. All documents in the docket are listed on the *http://www.regulations.gov* website. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wade Lehmann, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562–8082; email: *Lehmann.Wade@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA, 33 U.S.C. 1401 to 1445. The EPA's action would be relevant to persons, including organizations and government bodies, seeking to dispose of dredged material in ocean waters offshore of Mobile, Alabama. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government	USACE Civil Works projects, and other Federal agencies.
Industry and general public	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

a. History of Disposal Sites Offshore of Mobile, Alabama

The Mobile ODMDS is located between two and six miles south of Dauphin Island in the Gulf of Mexico and is 4.75 square nautical miles (nmi^2) in size. The Mobile ODMDS received interim site designation status in 1977 and final designation in 1988.

The USACE Mobile District and the EPA Region 4 have identified a need to either designate a new ODMDS or modify the existing Mobile ODMDS. The need for modifying the ocean disposal capacity is based on future capacity requirements, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland confined disposal facilities (CDFs) in the area.

The EPA is modifying the existing Mobile ODMDS rather than designate a new site off the coast of Mobile for ocean disposal of dredged material. The modification of the existing Mobile ODMDS for dredged material does not mean that the USACE or the EPA has approved the use of the Mobile ODMDS for open water disposal of dredged material from any specific project. Before any person can ocean dump dredged material at the Mobile ODMDS, the EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR, part 227) and the USACE must authorize the disposal. The EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if the EPA determines that environmental requirements under the MPRSA have not been met. This action is supported by an Environmental Assessment, which was established in accordance with the National Environmental Policy Act.

b. Location and Configuration of the Modified Mobile ODMDS

The modified ODMDS is in approximately 34 to 57 feet of water and is located between 2.0 and 6.0 nautical miles south of Dauphin Island, Alabama. The modified ODMDS would expand the existing Mobile ODMDS from a size of approximately 4.75 nmi^2 to approximately 23.8 nmi^2 in size. The location of the modified ODMDS is bounded by the coordinates listed below. The coordinates for the site are in North American Datum 83 (NAD 83):

Modified Mobile ODMDS

(A) 30° 13.0′ N, 88° 08.8′ W
(B) 30° 09.6′ N, 88° 04.8′ W
(C) 30° 08.5′ N, 88° 05.8′ W
(D) 30° 08.5′ N, 88° 12.8′ W
(E) 30° 12.4′ N, 88° 12.8′ W

The modification of the existing ODMDS will allow the EPA to adaptively manage the site to maximize its capacity, minimize the potential for mounding and associated safety concerns, and minimize the potential for any long-term adverse effects to the marine environment.

c. Management and Monitoring of the Site

The modified ODMDS is expected to receive dredged material from the federally authorized navigation project at Mobile Harbor, Alabama, and dredged material from other applicants who have obtained a MPRSA permit for the ocean disposal of dredged material. All persons using the site will be required to follow the Site Management and Monitoring Plan (SMMP) for the ODMDS that is specifically developed for the modified ODMDS. The SMMP includes management and monitoring measures to ensure that dredged materials disposed at the modified ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. This includes provisions to avoid and minimize potential impacts to artificial reefs and cultural resources. The SMMP for the modified ODMDS also addresses management of the site to ensure adverse mounding does not occur and ensures that disposal events minimize interference with other uses of ocean waters near the modified ODMDS. Future transportation to the ODMDS and disposal of dredged material at the

ODMDS will be governed by the currently approved version of the SMMP.

d. MPRSA Criteria

In evaluating the modified ODMDS, the EPA assessed the site according to the criteria set forth in the MPRSA, with emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the site designation satisfies those criteria. The EPA's *Final Environmental Assessment for Modification of the Ocean Dredged Material Disposal Site Mobile, Alabama, May 2020 (FEA),* provides an extensive evaluation of the criteria and other related factors for the modification of the existing ODMDS.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

The location of the modified ODMDS was screened in 1982 by the USACE as part of their evaluation of the area for selection of a location for ocean dumping of dredged material under Section 103 of the MPRSA, as there was no EPA-designated ODMDS at the time. That evaluation included considerations of potential interference with other activities in the marine environment including avoiding areas of existing critical fisheries or shellfisheries, regions of heavy commercial or recreational navigation, and potential historic properties. These evaluations were re-considered from 2002 through to the present time, as the modified ODMDS continued to be assessed.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

The modified ODMDS will only be used for disposal of suitable dredged material as determined by Section 103 of the MPRSA. Based on the USACE and the EPA's sediment testing and evaluation of dredged material, disposal is not expected to have any long-term impact on water quality. The modified ODMDS is located sufficiently far from shore (two to six miles) and fisheries resources to allow temporary water quality disturbances caused by ocean disposal of dredged material to be reduced to ambient conditions before reaching any environmentally sensitive areas.

(3) This criterion has been removed from the regulations and no longer applies.

(4) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

The location, size, and configuration of the modified ODMDS will provide long-term capacity, while also allowing effective site management, site monitoring, and limiting environmental impacts to the surrounding area to the greatest extent practicable.

Based on 25 years of projected new work and maintenance dredging, and permitted dredged material disposal needs, it is estimated that the modified ODMDS should be approximately 24 nmi^2 in size to meet the anticipated long-term disposal needs of the area. This would provide the modified ODMDS with an estimated capacity of approximately 260 million cubic yards, which is sufficient to manage risk, account for future unknown disposal operations from private entities, and provide a margin of navigation safety.

By adding approximately 19 nmi^2 to the existing Mobile ODMDS, the total area of the modified Mobile ODMDS is 23.8 nmi^2. An ODMDS of this size and capacity will provide a long-term ocean disposal option for the Mobile Bay area.

When determining the size of the proposed site, the ability to implement effective monitoring and surveillance programs was considered to ensure that the environment of the site could be protected, and that navigational safety would not be compromised by the mounding of dredged material, which could result in adverse wave conditions. A SMMP has been developed and will be implemented to determine if disposal at the site is significantly affecting adjacent areas and to detect the presence of adverse effects. At a minimum, the monitoring program will consist of bathymetric surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, and a health assessment of the benthic community.

(5) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

Locating the disposal site near the continental shelf is not feasible and would be cost prohibitive. Transporting material to and performing long-term monitoring of a site located off the continental shelf is not economically or operationally feasible.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

The modified ODMDS is in the Gulf of Mexico, between two and six miles offshore of Dauphin Island, Alabama. Water depths range from –34 to –57 feet (10.4 to 17.4 meters) with an overall average depth of –45 feet (13.7 meters). Sediments consist of sands to clays, with various mixtures of sand, silts, and clays. Most areas in the modified ODMDS have a higher percentage of silt/clay than sand. There tends to be more fine material in the northern portion of the site, and more fine sand on the southern portion of the modified ODMDS. There is a shallower mound (approximately –18 feet MLLW) located in the southeastern portion of the site, where material was historically placed for disposal. There are numerous oil and gas wells located throughout the proposed expansion area. Disposal shall not occur closer than 1,300 feet to any oil or gas rig that may be present within the site boundaries. The FEA contains a map of the ODMDS modification.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The modified ODMDS has been selected to avoid the presence of any exclusive breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The center of the modified ODMDS is several miles from any beaches or amenity areas. No significant impacts to beaches or amenity areas associated with the existing Mobile ODMDS have been detected.

(4) Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Only dredged material that meets the EPA Ocean Dumping Criteria in 40 CFR 220–228 and has been deemed suitable can be disposed of in the ODMDS. Dredged materials dumped in this area will primarily be silts and clays with some sands that originate from Mobile Bay including the Federal Channel and

areas of the Port. Average yearly disposal of dredged material into the modified ODMDS is expected to be approximately 2.9 million cubic yards of maintenance and new work dredged material. Hopper dredge, barge, and scow combinations are the usual vehicles of transport for the dredged material, resulting in release of dredged material closer to the bottom of the site which reduces resultant turbidity. None of the dredged material is packaged in any manner.

Under section 103 of the MPRSA, the USACE is the federal agency that decides whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of federal navigation projects involving ocean disposal of dredged materials, transportation to and disposal in ocean waters for disposal by the USACE is subject to the MPRSA, but not to a USACE permit. The USACE relies on the EPA's ocean dumping criteria when evaluating permit requests for (and implementing federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and federal projects involving ocean dumping of dredged material are subject to the EPA's review and concurrence. The EPA may concur with or without conditions or decline to concur on the permit or federal project, *i.e.,* non-concur. If the EPA concurs with conditions, the final permit or federal project authorization must include those conditions. If the EPA declines to concur (non-concurs) on an ocean dumping permit for dredged material, the USACE cannot issue the permit or authorize the transportation to and disposal of dredged material in the ocean associated with the federal project.

(5) *Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).*

The EPA expects monitoring and surveillance at the modified ODMDS to be feasible and readily performed from ocean or regional class research vessels. The entire area of the modified ODMDS has been surveyed and sampled in 2009 and 2017. The EPA will monitor the site for physical, biological, and chemical attributes as well as for potential impacts. Bathymetric surveys will be conducted routinely, and benthic infauna and epibenthic organisms will be monitored, as described in the SMMP for the site.

(6) *Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).*

Current velocities are greatest at the water's surface due to wind and wave action. Intermediate and bottom layer currents are driven by thermohaline and tidal circulations. Currents measured at gauge stations surrounding the ODMDS are predominantly to the west or southwest on the order of 10–30 centimeters per second.

(7) *Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).*

Previous disposal of dredged material in the existing Mobile ODMDS has resulted in temporary increases in suspended sediment concentrations during disposal operations, localized mounding within the site, burial of benthic organisms within the site, slight changes in the abundance and composition of benthic assemblages, and changes in the sediment composition from sandy sediments to finer-grained silts. Short-term, long-term, and cumulative effects of dredged material disposal in the modified ODMDS would be similar to those for the previously designated Mobile ODMDS.

(8) *Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).*

There will be minor, short-term interferences with commercial and recreational boat traffic during the transport of dredged material to the modified ODMDS. There are several oil and gas extraction platforms in the existing and modified Mobile ODMDS. The site has not been identified as an area of special scientific importance. There are no aquaculture areas near the site. There may be recreational fishing in the area. The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users of the ocean resources. There is one artificial reef site located approximately a quarter mile south of the modified ODMDS. The SMMP for the modified ODMDS contains provisions for corrective measures if impacts to the artificial reef related to dredged material disposal are identified.

(9) *The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).*

Water quality of the existing site is typical of the Gulf of Mexico. Water and sediment quality analyses conducted in the vicinity of the modified ODMDS and experience with past disposals in the previously designated Mobile ODMDS have not identified any adverse water quality impacts from ocean disposal of dredged material. The site supports benthic and epibenthic fauna characteristic of the shallow Gulf of Mexico and are widespread off the Gulf coast.

(10) *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).*

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the modified ODMDS. Disposal of dredged material, as well as monitoring, has been ongoing for the past 40 to 50 years. Nuisance species have not been found. The dredged material to be disposed of at the ODMDS is expected to be from similar locations to those dredged previously, therefore it expected that any benthic organisms transported to the site would be relatively similar in nature to those already there.

(11) *Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).*

A maritime investigation of this site was conducted in 1982 to identify areas of high and low probability of submerged resources. Past efforts showed the presence of magnetic anomalies that may be indicative of potential resources. Until further analysis is conducted, these anomalies should be avoided in the modified Mobile ODMDS.

The SMMP for the ODMDS contains measures to ensure that resources identified in up-to-date maritime investigations are avoided and are not adversely affected by dredged material disposal.

III. Environmental Statutory Review—National Environmental Policy Act of 1969, as Amended (NEPA); Magnuson-Stevens Fisheries Conservation and Management Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act, as Amended (ESA); National Historic Preservation Act, as Amended (NHPA)

a. National Environmental Policy Act

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted the EPA's

actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. The EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents.

A Draft Environmental Assessment (DEA) for the modification of the Mobile ODMDS was released for public review and comment for a 35-day period on September 26, 2018. The EPA re-noticed the DEA for public review and comment for a 34-day period on October 17, 2019. In addition, the EPA issued a preliminary Finding of No Significant Impact for public review and comment for a 30-day period on June 2, 2020.

The DEA presented the analysis and alternatives considered for the permanent designation of a modified ODMDS offshore Mobile, Alabama, for the purpose of providing an environmentally acceptable option for the ocean disposal of dredged material. The alternatives included: (1) No action/continued use of the previously designated ODMDS; (2) modification of the previously designated Mobile ODMDS to encompass a larger area capable of meeting the capacity needs during the next 25 years; (3) modification of the previously designated Mobile ODMDS to encompass a much larger area capable of meeting the capacity needs during the next 50 years; and (4) designation of a new site. The second alternative was presented as the selected alternative in the EA.

The EPA received comments on the DEA regarding issues that included: (1) Potential movement of disposed material impacting nearby artificial reefs; (2) consideration of impacts to the giant manta ray, a newly listed threatened species; (3) the age of the existing cultural resource surveys; and (4) a request for additional opportunity for public review and comment. A detailed responsiveness summary is included in the appendices in the FEA. In addition, a summary of the EPA's consideration of comments received regarding the proposal to modify the Mobile ODMDS is included below.

Following the consideration of comments received, the EPA has issued a Finding of No Significant Impact and the FEA. These documents are included in the docket for this action and may be accessed from *http://www.regulations.gov.*

b. Magnuson-Stevens Fishery Conservation and Management Act

The FEA includes a description of the history during the past 18 years of consultation with the National Marine Fisheries Service (NMFS) regarding the assessment of essential fish habitat (EFH), pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the MSA with respect to the Mobile ODMDS. On July 24, 2018, the USACE issued a Draft Integrated General Reevaluation Report with Supplemental Environmental Impact Statement on the Mobile Harbor Navigation Project, which included an assessment of EFH regarding the disposal of dredged material to the Mobile ODMDS. On September 7, 2018, NMFS issued a letter to the USACE that stated its agreement with the USACE's determination that the project will not adversely affect EFH. The EPA notified NMFS by letter dated September 25, 2018, of the proposed action to modify the Mobile ODMDS and provided the EPA's assessment that this action would not likely adversely affect EFH. On May 13, 2020, NMFS notified the EPA by email that the required EFH consultation under the MSA has been successfully concluded.

c. Coastal Zone Management Act

Pursuant to an Office of Water policy memorandum dated October 23, 1989, the EPA has evaluated the proposed site designations for consistency with the State of Alabama's approved coastal zone management program. On September 25, 2018, the EPA notified the Alabama Department of Environmental Management of the proposed modification of the Mobile ODMDS and provided them with the EPA's assessment that the proposed action was consistent with Alabama's coastal zone management program to the maximum extent practicable. On April 10, 2020, ADEM notified the EPA by email that the Alabama Coastal Area Management Program does not object to the proposal to expand the ODMDS on the basis that all placed material is required to meet the EPA's environmental criteria and it keeps the mineral resource within the system.

d. Endangered Species Act

The ESA, as amended, 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any federally listed endangered or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA notified NMFS and USFWS respectively by letters dated September 25, 2018, of the proposed action to modify the Mobile ODMDS and provided the EPA's assessment that this action would not likely adversely affect federally listed species or their critical habitat.

In a letter dated October 8, 2018, the USFWS concurred with the EPA's determination that the proposed action is not likely to adversely affect federally listed species under the jurisdiction of the USFWS. The USFWS further stated that no further endangered species consultation will be required unless: The proposed action is subsequently modified in a manner that causes an effect on listed species or their critical habitat; new information reveals that the proposed action may affect listed species or their critical habitat in a manner or to an extent not previously considered, or a new species is listed or critical habitat is designated under the ESA that may be affected by the proposed action. As of the date of this action, there are no new federally listed species under jurisdiction of the USFWS in the project area. There are also no new information or changes to the project that may affect species or their critical habitat in a manner or extent not previously considered.

Following the issuance of the EPA's letter dated September 25, 2018, the EPA learned of additional federally listed species under the jurisdiction of NMFS including the giant manta ray (*Manta birostris*) and the Bryde's whale (*Balaenoptera edeni brydei*). In addition, NMFS is in the process of developing a Gulf of Mexico Regional Biological Opinion, which is expected to address all federally listed species that may be affected by the modification of the Mobile ODMDS. Based on the EPA's May 8, 2020 communication with NMFS, the EPA is deferring completion of consultation with respect to the modification of the Mobile ODMDS pursuant to ESA Section 7(d).

e. National Historic Preservation Act

The USACE and the EPA initiated consultation with the State of Alabama's Historic Preservation Officer (SHPO) on September 25, 2018, to address the NHPA, 16 U.S.C. 470 to 470a–2, which requires Federal agencies to consider the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register of Historic Places. In a letter dated October 13, 2018, the Alabama Historical Commission (AHC)

recommended more up to date maritime surveys in the proposed action area.

During the public comment period for the draft rule to modify the Mobile ODMDS, the EPA received an email from the Choctaw Nation of Oklahoma (CNO) dated July 30, 2019 that notified the EPA that the proposed modification of the Mobile ODMDS lies within the CNO's area of historic interest and that unidentified cultural resources may be located in this area. The CNO also issued an email to the EPA dated November 18, 2019 that requested that they be a consulting party on the modification to the ODMDS pursuant to the NHPA. Following discussions with the AHC and the CNO, the EPA issued letters to the AHC and CNO dated January 24, 2020 that presented language that set forth management provisions to be included in the SMMP to ensure protection of historic and cultural archaeological resources and address the interests expressed by the AHC and the CNO. The EPA specifically proposed language in the SMMP that references a Programmatic Agreement between the USACE and the AHC regarding the Mobile Harbor General Reevaluation Study (Programmatic Agreement), which was signed on July 26, 2019, and sets forth surveys and other activities that would need to be conducted prior to the disposal of dredged material to unused portions of the expanded Mobile ODMDS. On February 25, 2020, the AHC responded by letter and informed the EPA of its agreement with the proposed language. During subsequent communications with the EPA through email and teleconference on February 24, and March 23, 2020, the CNO stated that they had no objections to the proposed language and had no further comments on the EPA's proposed modification of the Mobile ODMDS.

IV. Responses to Comments Received on the Proposed Rule

On June 25, 2019, the EPA published a proposed rule (docket number EPA–R04–OW–2016–0356) to modify the site for public review and comment for a 45-day period. During that time, the EPA received comments from government agencies including the CNO, the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of Interior (DOI). The EPA also received comments from two members of the public during this time. The specific comments received on the proposed rule and the EPA's responses to such comments are included in the Responsiveness Summary of Appendix C of the FEA, which may be accessed at *http://www.regulations.gov.* Below is a summary of the EPA's consideration of the comments received regarding the proposed rule.

The comments from the CNO and the EPA's consideration of such comments are described above in Section III.e.

NOAA issued a comment from its Marine Chart Division requesting clarity regarding the boundaries of the modified ODMDS and the boundaries that are currently defined on marine charts. The boundaries of the modified ODMDS were established to ensure protection of human health and the marine environment pursuant to the requirements of MPRSA. The boundaries are set forth by the coordinates of this regulation and are also presented in tables ES–3 and ES–4 of the FEA.

The DOI recommended that the modified ODMDS be re-surveyed prior to the deposition of dredged material using more modern equipment than what was available nearly 40 years ago. The SMMP for the Mobile ODMDS includes language that references a Programmatic Agreement that specifies work, including modern surveys, to be conducted prior to the disposal of dredged material for unused portions of the ODMDS.

The comments received from members of the public included concerns about the adequacy of the opportunity to provide comments on the DEA. The EPA subsequently reopened the public comment period for the DEA for a 34-day period on October 17, 2019. The public comments also referenced the DEA and expressed concerns about the description of the respective roles of the EPA and the USACE regarding the modification of the Mobile ODMDS. The FEA includes updated language from the language included in the DEA to ensure clarity regarding the responsibilities of the EPA under the MPRSA, including coordination with the USACE, with respect to the modification of the Mobile ODMDS. The public also provided recommended revisions to some of the language in the DEA, which are addressed in the FEA as described in more detail in the responsiveness summary in Appendix C of the FEA.

A member of the public requested that the rule be clarified to define the changes that would be expected to occur within the modified ODMDS that demonstrate that the capacity has been exhausted. The member of the public further requested that the rule explain how the USACE would be prevented from exceeding this capacity. The exhaustion of the capacity of the ODMDS will ultimately be evaluated based on monitoring data obtained from the ODMDS. The requirements for monitoring and management of the ODMDS, including the monitoring of changes in bathymetry, are set forth in the SMMP. The EPA and the USACE will utilize the monitoring data collected as the basis for understanding the changes in available capacity over time for the Mobile ODMDS. In addition, no material can be disposed of in the ODMDS without the EPA's review and concurrence in accordance with MPRSA Section 103. The EPA will consider all available data and information, including monitoring data from the site, prior to taking management action pursuant to MPRSA for the Mobile ODMDS.

A member of the public stated that the rule and the DEA should be revised to reflect a modification to the Mobile ODMDS that would accommodate the disposal needs during the next 50 years, instead of 25 years. A Memorandum of Understanding between the USACE South Atlantic Division and EPA Region 4 specifically identifies a period of 10 to 25 years for considering the long-term use for designation or modification of an ODMDS. Basing the size of an ODMDS on a longer planning period, such as 50 years, would significantly increase the necessary resources to manage and monitor the ODMDS. The decision to utilize a 25-year time frame for disposal was made by the USACE and the EPA in consideration of the agreed-upon provisions of the 2017 MOU. If it is found that material is accumulating in the site to a degree at which there are concerns (biological, chemical, physical), modeling will be undertaken to reassess the capacity as specified in the SMMP.

A member of the public expressed that the rule fails to address some key provisions to protect the water from contamination and illegal dumping. In accordance with the MPRSA and the criteria set forth by its implementing regulations, as described in Section II above, contaminated material cannot not be disposed in the Mobile ODMDS. Any unauthorized dumping of material to the Mobile ODMDS is not allowed by the rule that is being issued today and is subject to enforcement for illegal dumping.

V. Statutory and Executive Order Reviews

This rule modifies the Mobile ODMDS pursuant to Section 102 of the MPRSA. This action complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b). This site designation, does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule, the EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

d. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

e. Executive Order 13132: Federalism

This action does not have federalism implications. It does 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comments on this action from State and local officials.

f. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

As described in Section III.e. above, the CNO notified the EPA that the proposed modification of the Mobile ODMDS lies within the CNO's area of historic interest and requested to be a consulting party on the modification to the ODMDS pursuant to the NHPA. The EPA conducted a teleconference with the CNO on January 13, 2020 and discussed the CNO's interests regarding the EPA's proposed action. The EPA issued a letter to the CNO on January 24, 2020, that presented language that set forth management provisions to be included in the SMMP to ensure protection of historic and cultural archaeological resources and address the interests expressed by the CNO. During subsequent communications with the EPA through email and teleconference, the CNO stated that they had no objections to the proposed language and had no further comments on the EPA's proposed modification of the Mobile ODMDS.

g. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action concerns the modification of the existing Mobile ODMDS and only has the effect of providing a designated location for ocean disposal of dredged material pursuant to Section 102 (c) of the MPRSA.

h. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

i. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action includes environmental monitoring and measurement as described in the SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the modified ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP.

j. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA has assessed the overall protectiveness of modifying the existing Mobile ODMDS against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: July 17, 2020.

Mary Walker,

Regional Administrator, Region 4.

For the reasons set out in the preamble, the EPA amends chapter I, title 40 of the Code of **Federal Register** as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

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

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by revising paragraphs (h)(14)(i) through (iii) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(14) * * *

(i) *Location:* Corner Coordinates (NAD 1983) 30° 13.0′ N, 88° 08.8′ W; 30° 09.6′ N, 88° 04.8′ W; 30° 08.5′ N, 88° 05.8′ W; 30° 08.5′ N, 88° 12.8′ W; 30° 12.4′ N, 88° 12.8′ W.

(ii) *Size:* Approximately 23.8 square nautical miles in size.

(iii) *Depth:* Ranges from 34 to 57 feet (10.4 to 17.4 meters).

* * * * *

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material from the Mobile, Alabama area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 220–228;

(C) Transportation and Disposal shall be managed by the restrictions and requirements contained in the Site Management and Monitoring Plan (SMMP).;

(D) Monitoring of the site also shall be governed by the currently approved SMMP.

* * * * *

[FR Doc. 2020–15963 Filed 8–3–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 482

[CMS–1731–F and CMS–1744–F]

RIN 0938–AU07 and 0938–AU31

Medicare Program; FY 2021 Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) and Special Requirements for Psychiatric Hospitals for Fiscal Year Beginning October 1, 2020 (FY 2021)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPF), which include psychiatric hospitals and excluded psychiatric units of an Inpatient Prospective Payment System hospital or critical access hospital. In addition, we are adopting more recent Office of Management and Budget statistical area delineations, and applying a 2-year transition for all providers negatively impacted by wage index changes. We are also removing the term licensed independent practitioner(s) from the regulations for psychiatric hospitals. On April 6, 2020, we published an interim final rule with comment period to implement this statutorily mandated change. This final rule responds to comments on the interim final rule regarding changes to the term licensed independent practitioner, finalizes the implementing regulation, and explains how the new procedure will be put into practice. These changes will be effective for IPF discharges beginning with the 2021 Fiscal Year (FY), which runs from October 1, 2020 through September 30, 2021 (FY 2021).

DATES: These regulations are effective on October 1, 2020.

FOR FURTHER INFORMATION CONTACT: The IPF Payment Policy mailbox at *IPFPaymentPolicy@cms.hhs.gov* for general information.

Mollie Knight, (410) 786–7948 or Bridget Dickensheets, (410) 786–8670, for information regarding the market basket update, or the labor-related share.

Theresa Bean, (410) 786–2287 or James Hardesty, (410) 786–2629, for information regarding the regulatory impact analysis.

CAPT Scott Cooper, USPHS, (410) 786–9496, for issues related to special requirements for psychiatric hospitals.

SUPPLEMENTARY INFORMATION:

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

Addendum A to this final rule summarizes the FY 2021 IPF PPS payment rates, outlier threshold, cost of living adjustment factors for Alaska and Hawaii, national and upper limit cost-to-charge ratios, and adjustment factors. In addition, the B Addenda to this final rule shows the complete listing of International Classification of Diseases (ICD–10) Clinical Modification (CM) and Procedure Coding System codes underlying the Code First table, the FY 2021 IPF PPS comorbidity adjustment, and electroconvulsive therapy (ECT) procedure codes. The A and B Addenda are available online at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

Tables setting forth the FY 2021 Wage Index for Urban Areas Based on Core-Based Statistical Area (CBSA) Labor Market Areas and the FY 2021 Wage Index Based on CBSA Labor Market Areas for Rural Areas are available exclusively through the internet, on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/IPFPPS/WageIndex.html.*

I. Executive Summary

A. Purpose

This final rule updates the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPFs) for discharges occurring during the Fiscal Year (FY) beginning October 1, 2020 through September 30, 2021. In addition, this final rule updates the IPF wage index, adopts more recent Office of Management and Budget (OMB) statistical area delineations, and applies a 2-year transition for all providers negatively impacted by wage index changes.

B. Waiver of the 60-Day Delayed Effective Date for the Final Rule

We ordinarily provide a 60-day delay in the effective date of final rules after the date they are issued in accord with the Congressional Review Act (CRA) (5 U.S.C. 801(a)(3)). However, section 808(2) of the CRA provides that, if an agency finds good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule shall take effect at such time as the agency determines.

The United States is responding to an outbreak of respiratory disease caused by a novel (new) coronavirus that has now been detected in more than 190 locations internationally, including in all 50 States and the District of Columbia. The virus has been named ''SARS CoV 2'' and the disease it causes has been named ''coronavirus disease 2019'' (abbreviated ''COVID 19'').

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared the outbreak a ''Public Health Emergency of international concern''. On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a PHE for the United States to aid the nation's healthcare community in responding to COVID–19. On March 11, 2020, the WHO publicly characterized COVID–19 as a pandemic. On March 13, 2020, the President of the United States declared the COVID–19 outbreak a national emergency.

Due to CMS prioritizing efforts in support of containing and combatting the COVID–19 PHE, and devoting significant resources to that end, the work needed on the IPF PPS final rule was not completed in accordance with our usual schedule for this rulemaking, which aims for a publication date of at least 60 days before the start of the fiscal year to which it applies. The IPF PPS final rule is necessary to annually review and update the payment system, and it is critical to ensure that the payment policies for this payment system are effective on the first day of the fiscal year to which they are intended to apply. Therefore, due to CMS prioritizing efforts in support of containing and combatting the COVID–19 PHE, and devoting significant resources to that end, we are hereby waiving the 60-day delay in the effective date of the IPF PPS final rule; it would be contrary to the public interest for CMS to do otherwise. However, we are providing a 30-day delay in the effective date of the final rule in accord with section 5 U.S.C. 553(d) of the Administrative Procedure Act, which ordinarily requires a 30-day delay in the effective date of a final rule from the date of its public availability in the **Federal Register**, and section 1871(e)(1)(B)(i) of the Act, which generally prohibits a substantive rule from taking effect before the end of the 30-day period beginning on the date of its public availability.

C. Summary of the Major Provisions

1. Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS)

In this final rule we:

- Adjust the 2016-based IPF market basket update (2.2 percent) for economy-wide productivity (0 percentage point) as required by section 1886(s)(2)(A)(i) of the Social Security Act (the Act), resulting in a final IPF payment rate update of 2.2 percent for FY 2021.
- Made technical rate setting changes: The IPF PPS payment rates will be adjusted annually for inflation, as well as statutory and other policy factors. This rule updates:

++ The IPF PPS federal per diem base rate from $798.55 to $815.22.

++ The IPF PPS federal per diem base rate for providers who failed to report quality data to $799.27.

++ The Electroconvulsive therapy (ECT) payment per treatment from $343.79 to $350.97.

++ The ECT payment per treatment for providers who failed to report quality data to $344.10.

++ The labor-related share from 76.9 percent to 77.3 percent.

++ The wage index budget-neutrality factor to 0.9989.

++ The fixed dollar loss threshold amount from $14,960 to $14,630 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF PPS payments.

- Adopt more recent OMB core-based statistical area (CBSA) delineations and apply a 2-year transition for all providers negatively impacted by wage index changes.

2. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

We did not propose any changes to the IPFQR Program for FY 2021 or subsequent years; therefore, we are not finalizing any changes to the IPFQR Program. However, we received a comment requesting that CMS except IPFs from reporting IPFQR data during July 1, 2020 to December 31, 2020 under the IPFQR Program's Extraordinary Circumstances Exception (ECE) policy. We also received many comments requesting that we add a patient experience of care measure to the IPFQR Program. We appreciate these comments but note that they fall outside the scope of this rulemaking. We are evaluating options for potentially proposing to adopt a patient experience of care measure into the IPFQR Program in the future.

D. Summary of Impacts

Provision description	Total transfers & cost reductions
FY 2021 IPF PPS payment update	The overall economic impact of this final rule is an estimated $95 million in increased payments to IPFs during FY 2021.

II. Background

A. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary of the Department of Health and Human Services (the Secretary) develop a per diem Prospective Payment System (PPS) for inpatient hospital services furnished in psychiatric hospitals and excluded psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and excluded psychiatric units. ''Excluded psychiatric unit'' means a psychiatric unit in an inpatient prospective payment system (IPPS) hospital that is excluded from the IPPS, or a psychiatric unit in a Critical Access Hospital (CAH) that is excluded from the CAH payment system. These excluded psychiatric units will be paid under the IPF PPS.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to psychiatric distinct part units of CAHs.

Sections 3401(f) and 10322 of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to jointly as ''the Affordable Care Act'') added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) of the Act titled ''Reference to Establishment and Implementation of System,'' refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the rate year (RY) beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY.

Section 1886(s)(2)(A)(ii) of the Act required the application of an ''other adjustment'' that reduced any update to an IPF PPS base rate by a percentage point amount specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. As noted in the FY 2020 IPF PPS final rule, for the RY beginning in 2019, section 1886(s)(3)(E) of the Act required that the other adjustment reduction be equal to 0.75 percentage point. FY 2021 is the first year since the enactment of section 1886(s)(2)(A)(ii) that the ''other adjustment'' does not apply.

Sections 1886(s)(4)(A) through (D) of the Act require that for RY 2014 and each subsequent RY, IPFs that fail to report required quality data with respect to such a RY will have their annual update to a standard federal rate for discharges reduced by 2.0 percentage points. This may result in an annual update being less than 0.0 for a RY, and may result in payment rates for the upcoming RY being less than such payment rates for the preceding RY. Any reduction for failure to report required quality data will apply only to the RY involved, and the Secretary will not take into account such reduction in computing the payment amount for a subsequent RY. More information about the specifics of the current Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program is available in the FY 2020 IPF PPS final rule (84 FR 38459 through 38468).

To implement and periodically update these provisions, we have published various proposed rules, final rules and notices in the **Federal Register**. For more information regarding these documents, see the Center for Medicare & Medicaid (CMS) website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html?redirect=/InpatientPsychFacilPPS/.*

B. Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as required by section 124 of the BBRA and codified at 42 CFR part 412, subpart N. The November 2004 IPF PPS final rule set forth the federal per diem base rate for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The federal per diem payment under the IPF PPS is comprised of the federal per diem base rate described previously and certain patient-and facility-level payment adjustments for characteristics that were found in the regression analysis to be associated with statistically significant per diem cost differences with statistical significance defined as p less than 0.05. A complete discussion of the regression analysis that established the IPF PPS adjustment factors can be found in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

The patient-level adjustments include age, Diagnosis-Related Group (DRG) assignment, and comorbidities; additionally, there are adjustments to reflect higher per diem costs at the beginning of a patient's IPF stay and lower costs for later days of the stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and an adjustment for the presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for outlier cases, interrupted stays, and a per treatment payment for patients who undergo electroconvulsive therapy (ECT). During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended as of January 1, 2008, these payments are no longer available.

C. Annual Requirements for Updating the IPF PPS

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

In RY 2012, we proposed and finalized switching the IPF PPS payment rate update from a RY that begins on July 1 and ends on June 30, to one that coincides with the federal FY that begins October 1 and ends on September 30. In order to transition from one timeframe to another, the RY 2012 IPF PPS covered a 15-month period from July 1, 2011 through September 30, 2012. Therefore, the IPF RY has been equivalent to the October 1 through September 30 federal FY since RY 2013. For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period to coincide with a FY period, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

In November 2004, we implemented the IPF PPS in a final rule that published on November 15, 2004 in the **Federal Register** (69 FR 66922). In developing the IPF PPS, and to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. That regression analysis is described in detail in our November 28, 2003 IPF proposed rule (68 FR 66923; 66928 through 66933) and our November 15, 2004 IPF final rule

(69 FR 66933 through 66960). For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In the November 15, 2004 final rule, we explained the reasons for delaying an update to the adjustment factors, derived from the regression analysis, including waiting until we have IPF PPS data that yields as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We indicated that we did not intend to update the regression analysis and the patient-level and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (69 FR 66966).

On May 6, 2011, we published a final rule in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012)'' (76 FR 26432), which changed the payment rate update period to a RY that coincides with a FY update. Therefore, final rules are now published in the **Federal Register** in the summer to be effective on October 1. When proposing changes in IPF payment policy, a proposed rule will be issued in the spring, and the final rule in the summer to be effective on October 1. For a detailed list of updates to the IPF PPS, we refer readers to our regulations at 42 CFR 412.428.

The most recent IPF PPS annual update was published in a final rule on August 6, 2019 in the **Federal Register** titled, ''Medicare Program; FY 2020 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates for Fiscal Year Beginning October 1, 2019 (FY 2020)'' (84 FR 38424), which updated the IPF PPS payment rates for FY 2020. That final rule updated the IPF PPS federal per diem base rates that were published in the FY 2019 IPF PPS final rule (83 FR 38576) in accordance with our established policies.

III. Provisions of the FY 2021 IPF PPS Final Rule and Responses to Comments

On April 14, 2020, we published the FY 2021 IPF PPS proposed rule (85 FR 20625). We received 462 comments on the FY 2021 IPF PPS proposed rule from various stakeholders, including patients, providers, national organizations, and the Medicare Payment Advisory Commission (MedPAC). We received 6 comments on payment policy issues, and 456 comments that were outside of the scope of the proposed rule or focused on quality reporting.

A. Update to the FY 2021 Market Basket for the IPF PPS

1. Background

Originally, the input price index that was used to develop the IPF PPS was the ''Excluded Hospital with Capital'' market basket. This market basket was based on 1997 Medicare cost reports for Medicare participating inpatient rehabilitation facilities (IRFs), IPFs, long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing health care at a given point in time, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies) derived from that market basket. Accordingly, the term market basket as used in this document, refers to an input price index.

Since the IPF PPS inception, the market basket used to update IPF PPS payments has been rebased and revised to reflect more recent data on IPF cost structures. We last rebased and revised the IPF market basket in the FY 2020 IPF PPS rule, where we adopted a 2016-based IPF market basket, using Medicare cost report data for both Medicare participating freestanding psychiatric hospitals and psychiatric units. We refer readers to the FY 2020 IPF PPS final rule for a detailed discussion of the 2016-based IPF PPS market basket and its development (84 FR 38426 through 38447). References to the historical market baskets used to update IPF PPS payments are listed in the FY 2016 IPF PPS final rule (80 FR 46656).

2. FY 2021 IPF Market Basket Update

For FY 2021 (beginning October 1, 2020 and ending September 30, 2021), we are finalizing our proposal to use an estimate of the 2016-based IPF market basket increase factor to update the IPF PPS base payment rate. Consistent with historical practice, we are finalizing the market basket update for the IPF PPS based on the most recent IHS Global Inc.'s (IGI) forecast. IGI is a nationally recognized economic and financial forecasting firm that contracts with the CMS to forecast the components of the market baskets and multifactor productivity (MFP).

In the FY 2021 IPF PPS proposed rule (85 FR 20628), we proposed a FY 2021 IPF market basket percentage increase of 3.0 percent based on IGI's fourth quarter 2019 forecast of the 2016-based IPF market basket with historical data through third quarter 2019. We also proposed that if more recent data subsequently became available (for example, a more recent estimate of the market basket and/or the MFP), we would use such data, if appropriate, to determine the FY 2021 market basket update and the MFP adjustment in the final rule.

For this final rule, based on IGI's second quarter 2020 forecast with historical data through the first quarter of 2020, the 2016-based IPF market basket percentage increase for FY 2021 is 2.2 percent. Therefore, we are finalizing the 2016-based IPF market basket percentage increase for FY 2021 of 2.2 percent. We note that the fourth quarter 2019 forecast used for the proposed market basket update was developed prior to the economic impacts of the COVID–19 pandemic. This lower update (2.2 percent) for FY 2021 relative to the proposed rule (3.0 percent) is primarily driven by slower anticipated compensation growth for both health-related and other occupations as labor markets are expected to be significantly impacted during the recession that started in February 2020 and throughout the anticipated recovery.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (a RY that coincides with a FY) and each subsequent RY. In the FY 2021 IPF PPS proposed rule (85 FR 20628), we proposed a MFP adjustment of 0.4 percentage point based on IGI's fourth quarter 2019 forecast. Based on the more recent data available for this FY 2021 IPF PPS final rule, the current estimate of the 10-year moving average growth of MFP for FY 2021 is projected to be −0.1 percentage point. This MFP estimate is based on the most recent macroeconomic outlook from IGI at the time of rulemaking (released June 2020) in order to reflect more current historical economic data. IGI produces monthly macroeconomic forecasts, which include projections of all of the economic series used to derive MFP. In contrast, IGI only produces forecasts of the more detailed price proxies used in the 2016-based IPF market basket on a quarterly basis. Therefore, IGI's second quarter 2020 forecast is the most recent forecast of the 2016-based IPF market basket increase factor.

We note that it has typically been our practice to base the projection of the market basket price proxies and MFP in the final rule on the second quarter IGI forecast. For this FY 2021 IPF PPS final rule, we are using the IGI June

macroeconomic forecast for MFP because it is a more recent forecast, and it is important to use more recent data during this period when economic trends, particularly employment and labor productivity, are notably uncertain because of the COVID–19 pandemic. Historically, the MFP adjustment based on the second quarter IGI forecast has been very similar to the MFP adjustment derived with IGI's June macroeconomic forecast. Substantial changes in the macroeconomic indicators in between monthly forecasts is atypical.

Given the unprecedented economic uncertainty as a result of the COVID–19 pandemic, the changes in the IGI macroeconomic series used to derive MFP between the second quarter 2020 IGI forecast and the IGI June 2020 macroeconomic forecast is significant. Therefore, we believe it is technically appropriate to use IGI's more recent June 2020 macroeconomic forecast to determine the MFP adjustment for the final rule as it reflects more recent historical data. For comparison purposes, the 10-year moving average growth of MFP for FY 2021 is projected to be −0.1 percentage point based on IGI's June 2020 macroeconomic forecast compared to a FY 2021 projected 10-year moving average growth of MFP of 0.7 percentage point based on IGI's second quarter 2020 forecast. Mechanically subtracting the negative 10-year moving average growth of MFP from the IPF market basket percentage increase using the data from the IGI June 2020 macroeconomic forecast would have resulted in a 0.1 percentage point increase in the FY 2021 IPF payment update percentage. However, under section 1886(s)(2)(A) of the Act, the Secretary is required to reduce (not increase) the IPF market basket percentage by changes in economy-wide productivity. Accordingly, we will be applying a 0.0 percentage point MFP adjustment to the IPF market basket percentage. Therefore, the final FY 2021 IPF PPS payment rate update is 2.2 percent. For more information on the productivity adjustment, we refer readers to the discussion in the FY 2016 IPF PPS final rule (80 FR 46675).

3. FY 2021 IPF Labor-Related Share

Due to variations in geographic wage levels and other labor-related costs, payment rates under the IPF PPS will continue to be adjusted by a geographic wage index, which will apply to the labor-related portion of the federal per diem base rate (hereafter referred to as the labor-related share).

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We will continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2016-based IPF market basket, we are finalizing our proposal to continue to include in the labor-related share the sum of the relative importance of Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support Services; Installation, Maintenance, and Repair; All Other: Labor-related Services; and a portion of the Capital-Related cost weight (46 percent) from the 2016-based IPF market basket. The relative importance reflects the different rates of price change for these cost categories between the base year (FY 2016) and FY 2021. For more information on the labor-related share cost weights and its calculation, we refer readers to the FY 2020 IPF PPS final rule (84 FR 38445 through 38447). Based on IGI's fourth quarter 2019 forecast of the 2016-based IPF market basket, we proposed a total labor-related share for FY 2021 of 77.2 percent (the sum of 74.1 percent for the operating costs and 3.1 percent for the labor-related share of Capital). As stated in the FY 2021 IPF PPS proposed rule (85 FR 20629), we also proposed that if more recent data become available, we would use such data, if appropriate, to determine the FY 2021 labor-related share for the final rule.

Comment: One commenter opposed the increase in the labor-related share from 76.9 percent to 77.2 percent stating it would negatively impact any facility with a wage index below 1.0. This commenter was concerned that the growing disparity in wage index values places facilities in low wage areas at a significant disadvantage, and this proposal would further increase that disparity. The commenter encouraged CMS to maintain the FY 2020 labor-related share in FY 2021.

Response: We appreciate the commenter's concern over the increase in the labor-related share; however, we believe it is technically appropriate to use the sum of the FY 2021 relative importance values for the labor-related cost categories based on the most recent forecast of the 2016-based IPF market basket in order to determine the labor-related share for FY 2021, as it accounts for more recent data regarding price pressures and cost structure of IPFs. Our policy to use the most recent market basket to determine the labor-related share is a policy we have consistently applied for the IPF PPS (such as for the FY 2020 IPF PPS final rule (84 FR 38446)) as well as for other PPSs, including, but not limited to, the IRF PPS (84 FR 39089) and the LTCH PPS (84 FR 42642).

Final Decision: After careful consideration of the comment, we are finalizing the use of the sum of the FY 2021 relative importance for the labor-related cost categories based on the most recent forecast (IGI's second quarter 2020 forecast) of the 2016-based IPF market basket.

Based on IGI's second quarter 2020 forecast of the 2016-based IPF market basket, the sum of the FY 2021 relative importance for Wages and Salaries; Employee Benefits; Professional Fees: Labor-related; Administrative and Facilities Support Services; Installation Maintenance & Repair Services; and All Other: Labor-related Services is 74.2 percent. The portion of Capital costs that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage applied to the 2012-based IPF market basket. Since the relative importance for Capital is 6.8 percent of the 2016-based IPF market basket in FY 2021, we took 46 percent of 6.8 percent to determine the labor-related share of Capital for FY 2021 of 3.1 percent. Therefore, we are finalizing a total labor-related share for FY 2021 of 77.3 percent (the sum of 74.2 percent for the operating costs and 3.1 percent for the labor-related share of Capital). Table 1 shows the FY 2021 labor-related share and the FY 2020 labor-related share using the relative importance of the 2016-based IPF market basket.

Table 1: FY 2021 IPF Labor-Related Share and FY 2020 IPF Labor-Related Share based on the 2016-based IPF Market Basket

	Relative importance, labor-related share, FY 2021 20:2 forecast[1]	Relative importance, labor-related share, FY 2020 19:2 forecast[2]
Wages and Salaries	52.9	52.5
Employee Benefits	13.6	13.6
Professional Fees: Labor-related[3]	4.3	4.3
Administrative and Facilities Support Services	0.6	0.6
Installation, Maintenance and Repair	1.3	1.3
All Other Labor-related Services	1.5	1.5
Capital-related (.46)	3.1	3.1
Total	77.3	76.9

1 IHS Global Inc. 2nd quarter 2020 forecast.
2 Based on IHS Global Inc. 2nd quarter 2019 forecast as published in the Federal Register (84 FR 38447).
3 Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office contract labor costs.

B. Updates to the IPF PPS Rates for FY Beginning October 1, 2020

The IPF PPS is based on a standardized federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. Information concerning this standardization can be found in the November 2004 IPF PPS final rule (69 FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget-neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the RY 2007 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be $575.95.

The federal per diem base rate has been updated in accordance with applicable statutory requirements and § 412.428 through publication of annual notices or proposed and final rules. A detailed discussion on the standardized budget-neutral federal per diem base rate and the electroconvulsive therapy (ECT) payment per treatment appears in the FY 2014 IPF PPS update notice (78 FR 46738 through 46740). These documents are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html.*

IPFs must include a valid procedure code for ECT services provided to IPF beneficiaries in order to bill for ECT services, as described in our Medicare Claims Processing Manual, Chapter 3, Section 190.7.3 (available at *https://*

www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c03.pdf.) There were no changes to the ECT procedure codes used on IPF claims as a result of the proposed update to the ICD–10–PCS code set for FY 2021. Addendum B to this final rule shows the ECT procedure codes for FY 2021 and is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

2. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Payment Per Treatment

The current (FY 2020) federal per diem base rate is $798.55 and the ECT payment per treatment is $343.79. For the final FY 2021 federal per diem base rate, we applied the payment rate update of 2.2 percent that is, the 2016-based IPF market basket increase for FY 2021 of 2.2 percent less the productivity adjustment of 0 percentage point and the wage index budget-neutrality factor of 0.9989 (as discussed in section III.D.1 of this final rule) to the FY 2020 federal per diem base rate of $798.55, yielding a final federal per diem base rate of $815.22 for FY 2021. Similarly, we applied the 2.2 percent payment rate update and the 0.9989 wage index budget-neutrality factor to the FY 2020 ECT payment per treatment of $343.79, yielding a final ECT payment per treatment of $350.97 for FY 2021.

Section 1886(s)(4)(A)(i) of the Act requires that for RY 2014 and each subsequent RY, in the case of an IPF that fails to report required quality data with respect to such RY, the Secretary will reduce any annual update to a standard federal rate for discharges during the RY by 2.0 percentage points. Therefore, we are applying a 2.0 percentage point reduction to the federal per diem base rate and the ECT payment per treatment as follows:

- For IPFs that fail to meet IPFQR Program requirements, we applied a 0.2 percent payment rate update (that is, the IPF market basket increase for FY 2021 of 2.2 percent less the productivity adjustment of 0 percentage point for an update of 2.2 percent, and further reduced by 2 percentage points in accordance with section 1886(s)(4)(A)(i) of the Act), and the wage index budget-neutrality factor of 0.9989 to the FY 2020 federal per diem base rate of $798.55, yielding a federal per diem base rate of $799.27 for FY 2021.
- For IPFs that fail to meet IPFQR Program requirements, we applied the 0.2 percent annual payment rate update and the 0.9989 wage index budget-neutrality factor to the FY 2020 ECT payment per treatment of $343.79, yielding an ECT payment per treatment of $344.10 for FY 2021.

C. Updates to the IPF PPS Patient-Level Adjustment Factors

1. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 Medicare Provider and Analysis Review (MedPAR) data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). We continue to use the existing regression-derived adjustment factors established in 2005 for FY 2021. However, we have used more recent claims data to simulate payments to finalize the outlier fixed dollar loss threshold amount and to assess the impact of the IPF PPS updates.

2. IPF PPS Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity Diagnosis Related Groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

a. Update to MS–DRG Assignment

We believe it is important to maintain for IPFs the same diagnostic coding and Diagnosis Related Group (DRG) classification used under the (IPPS) for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD–9–CM) and DRG patient classification system (MS–DRGs) that were utilized at the time under the IPPS. In the RY 2009 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the RY 2009 IPF PPS notice (73 FR 25716), we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS–DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the RY 2009 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis discussed in detail in the November 28, 2003 IPF proposed rule (68 FR 66923; 66928 through 66933) and the November 15, 2004 IPF final rule (69 FR 66933 through 66960). Mapping the DRGs to the MS–DRGs resulted in the current 17 IPF MS–DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment. For FY 2021, we did not propose any changes to the IPF MS–DRG adjustment factors.

In the FY 2015 IPF PPS final rule published August 6, 2014 in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for FY Beginning October 1, 2014 (FY 2015)'' (79 FR 45945 through 45947), we finalized conversions of the ICD–9–CM-based MS–DRGs to ICD–10–CM/PCS-based MS–DRGs, which were implemented on October 1, 2015. Further information on the ICD–10–CM/PCS MS–DRG conversion project can be found on the CMS ICD–10–CM website at *https://www.cms.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

For FY 2021, we are finalizing our proposal to continue to make the existing payment adjustment for psychiatric diagnoses that group to one of the existing 17 IPF MS–DRGs listed in Addendum A. Addendum A is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.* Psychiatric principal diagnoses that do not group to one of the 17 designated MS–DRGs will still receive the federal per diem base rate and all other applicable adjustments, but the payment will not include an MS–DRG adjustment.

The diagnoses for each IPF MS–DRG will be updated as of October 1, 2020, using the final IPPS FY 2021 ICD–10–CM/PCS code sets. The FY 2021 IPPS final rule includes tables of the changes to the ICD–10–CM/PCS code sets, which underlie the FY 2021 IPF MS–DRGs. Both the FY 2021 IPPS final rule and the tables of changes to the ICD–10–CM/PCS code sets, which underlie the FY 2021 MS–DRGs are available on the IPPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html.*

Code First

As discussed in the ICD–10–CM Official Guidelines for Coding and Reporting, certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology. For such conditions, the ICD–10–CM has a coding convention that requires the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a ''use additional code'' note at the etiology code, and a ''code first'' note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes (etiology followed by manifestation). In accordance with the ICD–10–CM Official Guidelines for Coding and Reporting, when a primary (psychiatric) diagnosis code has a ''code first,'' the provider would follow the instructions in the ICD–10–CM text. The submitted claim goes through the CMS processing system, which will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

For more information on the code first policy, we refer readers to the November 2004 IPF PPS final rule (69 FR 66945) and sections I.A.13 and I.B.7 of the FY 2020 ICD–10–CM Coding Guidelines, which is available at *https://www.cdc.gov/nchs/icd/data/10cmguidelines-FY2019-final.pdf.* In the FY 2015 IPF PPS final rule, we provided a code first table for reference that highlights the same or similar manifestation codes where the code first instructions apply in ICD–10–CM that were present in ICD–9–CM (79 FR 46009). In FY 2018, FY 2019 and FY 2020, there were no changes to the final ICD–10–CM/PCS codes in the IPF Code First table. For FY 2021, there were 18 ICD–10–PCS codes deleted from the final IPF Code First table. The final FY 2021 Code First table is shown in Addendum B on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

b. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain existing medical or psychiatric conditions that are expensive to treat. In our RY 2012 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions for discharge claims, on or after October 1, 2015, require IPFs to enter the complete ICD–10–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission, or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM code first instructions applied. In a code first situation, the submitted claim goes through the CMS processing system, which will identify the principal diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign an MS–DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

As noted previously, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD–9–CM codes were converted to ICD–10–CM/PCS in our FY 2015 IPF PPS final rule (79 FR 45947 through 45955). The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD–10–CM implementation as it would be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/PCS implementation on October 1, 2015. All conversion efforts were made with the intent of achieving this goal. For FY 2021, we are finalizing our proposal to continue to use the same comorbidity adjustment factors in effect in FY 2020, which are found in Addendum A and available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

We have updated the ICD–10–CM/PCS codes which are associated with the existing IPF PPS comorbidity categories, based upon the final FY 2021 update to the ICD–10–CM/PCS code set. The final FY 2021 ICD–10–CM/PCS updates include 12 ICD10–CM diagnosis codes added to the Poisoning comorbidity category and 223 ICD–10–PCS codes added to the Oncology Procedures comorbidity category. In addition, 4 ICD10–PCS codes were deleted from the Poisoning comorbidity category. These updates are detailed in Addenda B–2 and B–3 of this final rule, which are available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-ServicePayment/InpatientPsychFacilPPS/tools.html.*

In accordance with the policy established in the FY 2015 IPF PPS final rule (79 FR 45949 through 45952), we reviewed all new FY 2021 ICD–10–CM codes to remove codes that were site ''unspecified'' in terms of laterality from the FY 2020 ICD–10–CM/PCS codes in instances where more specific codes are available. As we stated in the FY 2015 IPF PPS final rule, we believe that specific diagnosis codes that narrowly identify anatomical sites where disease, injury, or a condition exists should be used when coding patients' diagnoses whenever these codes are available. We finalized in the FY 2015 IPF PPS rule, that we would remove site ''unspecified'' codes from the IPF PPS ICD–10–CM/PCS codes in instances when laterality codes (site specified codes) are available, as the clinician should be able to identify a more specific diagnosis based on clinical assessment at the medical encounter. We note that none of the final additions to the FY 2021 ICD–10–CM/PCS codes were site ''unspecified'' by laterality; therefore, we are not removing any of the new codes.

c. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (range of ages) for payment adjustments. In general, we found that the cost per day increases with age. The older age groups are costlier than the under 45 age

group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant. For FY 2021, we are finalizing our proposal to continue to use the patient age adjustments currently in effect in FY 2020, as shown in Addendum A of this rule (see *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*).

d. Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF. As discussed in the November 2004 IPF PPS final rule, we used a regression analysis to estimate the average differences in per diem cost among stays of different lengths (69 FR 66947 through 66950). As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section III.D.4 of this rule.

For FY 2021, we are finalizing our proposal to continue to use the variable per diem adjustment factors currently in effect, as shown in Addendum A of this rule (available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*). A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

D. Updates to the IPF PPS Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the RY 2007 IPF PPS final rule (71 FR 27061), RY 2009 IPF PPS (73 FR 25719) and the RY 2010 IPF PPS notices (74 FR 20373), in order to provide an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area, as defined in § 412.64(b)(1)(ii)(A) and (C).

Due to the variation in costs and because of the differences in geographic wage levels, in the November 15, 2004 IPF PPS final rule, we required that payment rates under the IPF PPS be adjusted by a geographic wage index. We proposed and finalized a policy to use the unadjusted, pre-floor, pre-reclassified IPPS hospital wage index to account for geographic differences in IPF labor costs. We implemented use of the pre-floor, pre-reclassified IPPS hospital wage data to compute the IPF wage index since there was not an IPF-specific wage index available. We believe that IPFs generally compete in the same labor market as IPPS hospitals so the pre-floor, pre-reclassified IPPS hospital wage data should be reflective of labor costs of IPFs. We believe this pre-floor, pre-reclassified IPPS hospital wage index to be the best available data to use as proxy for an IPF specific wage index. As discussed in the RY 2007 IPF PPS final rule (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, we refer readers to the FY 2019 IPPS/LTCH PPS final rule (83 FR 41362 through 41390). Our wage index policy at § 412.424(a)(2), requires us to use the best Medicare data available to estimate costs per day, including an appropriate wage index to adjust for wage differences.

When the IPF PPS was implemented in the November 15, 2004 IPF PPS final rule, with an effective date of January 1, 2005, the pre-floor, pre-reclassified IPPS hospital wage index that was available at the time was the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index. Historically, the IPF wage index for a given RY has used the pre-floor, pre-reclassified IPPS hospital wage index from the prior FY as its basis. This has been due in part to the pre-floor, pre-reclassified IPPS hospital wage index data that were available during the IPF rulemaking cycle, where an annual IPF notice or IPF final rule was usually published in early May. This publication timeframe was relatively early compared to other Medicare payment rules because the IPF PPS follows a RY, which was defined in the implementation of the IPF PPS as the 12-month period from July 1 to June 30 (69 FR 66927). Therefore, the best available data at the time the IPF PPS was implemented was the pre-floor, pre-reclassified IPPS hospital wage index from the prior FY (for example, the RY 2006 IPF wage index was based on the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index).

In the RY 2012 IPF PPS final rule, we changed the reporting year timeframe for IPFs from a RY to the FY, which begins October 1 and ends September 30 (76 FR 26434 through 26435). In that FY 2012 IPF PPS final rule, we continued our established policy of using the pre-floor, pre-reclassified IPPS hospital wage index from the prior year (that is, from FY 2011) as the basis for the FY 2012 IPF wage index. This policy of basing a wage index on the prior year's pre-floor, pre-reclassified IPPS hospital wage index has been followed by other Medicare payment systems, such as hospice and IRF. By continuing with our established policy, we remained consistent with other Medicare payment systems.

In FY 2020, we finalized the IPF wage index methodology to align the IPF PPS wage index with the same wage data timeframe used by the IPPS for FY 2020 and subsequent years. Specifically, we finalized to use the pre-floor, pre-reclassified IPPS hospital wage index from the FY concurrent with the IPF FY as the basis for the IPF wage index. For example, the FY 2020 IPF wage index would be based on the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index rather than on the FY 2019 pre-floor, pre-reclassified IPPS hospital wage index.

We explained in the FY 2020 proposed rule (84 FR 16973), that using the concurrent pre-floor, pre-reclassified IPPS hospital wage index would result in the most up-to-date wage data being the basis for the IPF wage index. In addition, it would result in more consistency and parity in the wage index methodology used by other Medicare payment systems. The Medicare SNF PPS already used the concurrent IPPS hospital wage index data as the basis for the SNF PPS wage index. Thus, the wage adjusted Medicare payments of various provider types would be based upon wage index data from the same timeframe. CMS proposed similar policies to use the concurrent pre-floor, pre-reclassified IPPS hospital wage index data in other Medicare payment systems, such as hospice facilities and IRFs. For FY 2021,

we proposed to continue to use the concurrent pre-floor, pre-reclassified IPPS hospital wage index as the basis for the IPF wage index.

Comment: We received two comments agreeing with our longstanding belief that IPFs generally compete in the same labor market as IPPS hospitals; however, the commenters recommend that CMS incorporate a frontier state floor for the IPF wage index. In addition, we received a comment encouraging CMS to consider developing, as an alternative to the current hospital wage index, a market-level wage index that would use wage data from all employers and industry-specific occupational weights, adjust for geographic differences in the ratio of benefits to wages, adjust at the county level and smooth large differences between counties, and include a transition period to mitigate large changes in wage index values.

Response: We appreciate these commenters' suggestions regarding opportunities to improve the accuracy of the IPF wage index. We did not propose the specific policies suggested by commenters, but we will take them into consideration to potentially inform future rulemaking.

Final Decision: For FY 2021, we are finalizing our proposal to continue to use the concurrent pre-floor, pre-reclassified IPPS hospital wage index as the basis for the IPF wage index.

We will apply the IPF wage index adjustment to the labor-related share of the national base rate and ECT payment per treatment. The labor-related share of the national rate and ECT payment per treatment will change from 76.9 percent in FY 2020 to 77.3 percent in FY 2021. This percentage reflects the labor-related share of the 2016-based IPF market basket for FY 2021 (see section III.A of this rule).

b. Office of Management and Budget (OMB) Bulletins

(i) Background

The wage index used for the IPF PPS is calculated using the unadjusted, pre-reclassified and pre-floor inpatient PPS (IPPS) wage index data and is assigned to the IPF on the basis of the labor market area in which the IPF is geographically located. IPF labor market areas are delineated based on the CBSAs established by the OMB.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses through OMB Bulletins. These bulletins contain information regarding CBSA changes, including changes to CBSA numbers and titles. OMB bulletins may be accessed online at *https://www.whitehouse.gov/omb/information-for-agencies/bulletins/.* In accordance with our established methodology, the IPF PPS has historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the IPPS hospital wage index used to determine the IPF wage index.

In the RY 2007 IPF PPS final rule (71 FR 27061 through 27067), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB CBSA geographic designations in RY 2007, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

In the RY 2009 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applied to the IPPS hospital wage index used to determine the current IPF wage index and stated that we expected to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721).

On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). These OMB Bulletin changes were reflected in the FY 2015 pre-floor, pre-reclassified IPPS hospital wage index, upon which the FY 2016 IPF wage index was based. We adopted these new OMB CBSA delineations in the FY 2016 IPF wage index and subsequent IPF wage indexes. We refer readers to the FY 2016 IPF PPS final rule (80 FR 46682 through 46689) for a full discussion of our implementation of the OMB labor market area delineations beginning with the FY 2016 wage index.

On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provided updates to and superseded OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. The complete list of statistical areas incorporating these changes is provided in OMB Bulletin No. 15–01. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/omb/information-for-agencies/bulletins/.*

OMB Bulletin No. 15–01 established revised delineations for the Nation's Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas. The bulletin also provided delineations of Metropolitan Divisions as well as delineations of New England City and Town Areas. As discussed in the FY 2017 IPPS/LTCH PPS final rule (81 FR 56913), the updated labor market area definitions from OMB Bulletin 15–01 were implemented under the IPPS beginning on October 1, 2016 (FY 2017). Therefore, we implemented these revisions for the IPF PPS beginning October 1, 2017 (FY 2018), consistent with our historical practice of modeling IPF PPS adoption of the labor market area delineations after IPPS adoption of these delineations (historically the IPF wage index has been based upon the pre-floor, pre-reclassified IPPS hospital wage index from the prior year).

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2014 and July 1, 2015. In the FY 2020 IPF PPS final rule (84 FR 38453 through 38454), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IPF wage index. Given that the loss of the rural adjustment was mitigated in part by the increase in wage index value, and that only a single IPF was affected by this change, we did not believe it was necessary to transition this provider from its rural to newly urban status. We refer readers to the FY 2020 IPF PPS final rule (84 FR 38453 through 38454) for a more detailed discussion about the decision to forego a transition plan in FY 2020.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued, OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of OMB Bulletin No. 18–04 may be obtained at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.* According to OMB, ''[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** [75 FR 37246], and Census Bureau data.'' (We note that, on March 6, 2020, OMB issued OMB Bulletin 20–01 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*) but it was not issued in time for development of this final rule.)

While OMB Bulletin No. 18–04 is not based on new census data, it includes some material changes to the OMB statistical area delineations that are necessary to incorporate into the IPF PPS. These changes include some new CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would be split apart. We discuss these changes in more detail in the sections below.

(ii) Implementation of New Labor Market Area Delineations

We believe it is important for the IPF PPS to use, as soon as is reasonably possible, the latest available labor market area delineations in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We believe that using the most current delineations will increase the integrity of the IPF PPS wage index system by creating a more accurate representation of geographic variations in wage levels. We explained in the proposed rule (85 FR 20633) that we carefully analyzed the impacts of adopting the new OMB delineations, and found no compelling reason to further delay implementation. Therefore, we proposed (85 FR 20633 through 20639) to implement the new OMB delineations as described in the September 14, 2018 OMB Bulletin No. 18–04, effective beginning with the FY 2021 IPF PPS wage index. We proposed to adopt the updates to the OMB delineations announced in OMB Bulletin No. 18–04 effective for FY 2021 under the IPF PPS. As noted above, the March 6, 2020 OMB Bulletin 20–01 was not issued in time for development of this final rule. We also proposed to implement a wage index transition policy that would be applicable to all IPFs that may experience negative impacts due to the implementation of the revised OMB delineations. This transition is discussed in more detail below in section III.D.1.b.iii of this final rule.

(a.) Micropolitan Statistical Areas

OMB defines a ''Micropolitan Statistical Area'' as a CBSA associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), we determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each state's IPF PPS rural wage index. We refer the reader to the FY 2007 IPF PPS final rule (71 FR 27064 through 27065) for a complete discussion regarding treating Micropolitan Areas as rural.

(b.) Urban Counties That Would Become Rural Under the Revised OMB Delineations

As previously discussed, in the FY 2021 proposed rule (85 FR 20633 through 20639), we proposed to implement the new OMB labor market area delineations (based upon OMB Bulletin No. 18–04) beginning in FY 2021. Our analysis shows that a total of 34 counties (and county equivalents) and 5 providers are located in areas that were previously considered part of an urban CBSA but would be considered rural beginning in FY 2021 under these revised OMB delineations. Table 2 lists the 34 urban counties that would be rural if we finalize our proposal to implement the revised OMB delineations.

TABLE 2: Counties Previously Considered Part of an Urban CBSA that Would Become Rural Areas Under Revised OMB Delineations

FIPS County Code	County/County Equivalent	State	Current CBSA	Labor Market Area
01127	Walker	AL	13820	Birmingham-Hoover, AL
12045	Gulf	FL	37460	Panama City, FL
13007	Baker	GA	10500	Albany, GA
13235	Pulaski	GA	47580	Warner Robins, GA
15005	Kalawao	HI	27980	Kahului-Wailuku-Lahaina, HI
17039	De Witt	IL	14010	Bloomington, IL
17053	Ford	IL	16580	Champaign-Urbana, IL
18143	Scott	IN	31140	Louisville/Jefferson County, KY-IN
18179	Wells	IN	23060	Fort Wayne, IN
19149	Plymouth	IA	43580	Sioux City, IA-NE-SD
20095	Kingman	KS	48620	Wichita, KS
21223	Trimble	KY	31140	Louisville/Jefferson County, KY-IN
22119	Webster	LA	43340	Shreveport-Bossier City, LA
26015	Barry	MI	24340	Grand Rapids-Wyoming, MI
26159	Van Buren	MI	28020	Kalamazoo-Portage, MI
27143	Sibley	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI
28009	Benton	MS	32820	Memphis, TN-MS-AR
29119	Mc Donald	MO	22220	Fayetteville-Springdale-Rogers, AR-MO
30037	Golden Valley	MT	13740	Billings, MT
31081	Hamilton	NE	24260	Grand Island, NE
38085	Sioux	ND	13900	Bismarck, ND
40079	Le Flore	OK	22900	Fort Smith, AR-OK
45087	Union	SC	43900	Spartanburg, SC
46033	Custer	SD	39660	Rapid City, SD
47081	Hickman	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
48007	Aransas	TX	18580	Corpus Christi, TX
48221	Hood	TX	23104	Fort Worth-Arlington, TX
48351	Newton	TX	13140	Beaumont-Port Arthur, TX
48425	Somervell	TX	23104	Fort Worth-Arlington, TX
51029	Buckingham	VA	16820	Charlottesville, VA
51033	Caroline	VA	40060	Richmond, VA
51063	Floyd	VA	13980	Blacksburg-Christiansburg-Radford, VA
53013	Columbia	WA	47460	Walla Walla, WA
53051	Pend Oreille	WA	44060	Spokane-Spokane Valley, WA

We proposed that the wage data for all providers located in the counties listed above would now be considered rural, beginning in FY 2021, when calculating their respective state's rural wage index. This rural wage index value would also be used under the IPF PPS. We recognize that rural areas typically have lower area wage index values than urban areas, and providers located in these counties may experience a negative impact in their IPF payment due to the proposed adoption of the revised OMB delineations. We refer readers to section iii of this final rule for a discussion of the finalized wage index transition policy, particularly, the discussion of the finalized wage index transition policy regarding the 5-percent cap for providers that may experience a decrease in their wage index from the prior FY.

(c.) Rural Counties That Would Become Urban Under the Revised OMB Delineations

As previously discussed, we proposed to implement the new OMB labor market area delineations (based upon OMB Bulletin No. 18–04) beginning in FY 2021. Analysis of these OMB labor market area delineations shows that a total of 47 counties (and county equivalents) and 4 providers are located in areas that were previously considered rural but would now be considered urban under the revised OMB delineations. Table 3 lists the 47 rural counties that would be urban if we finalize our proposal to implement the revised OMB delineations.

TABLE 3: Counties that Would Gain Urban Status Under Revised OMB Delineations

FIPS County Code	County/County Equivalent	State Name	New CBSA	Counties
01063	Greene	AL	46220	Tuscaloosa, AL
01129	Washington	AL	33660	Mobile, AL
05047	Franklin	AR	22900	Fort Smith, AR-OK
12075	Levy	FL	23540	Gainesville, FL
13259	Stewart	GA	17980	Columbus, GA-AL
13263	Talbot	GA	17980	Columbus, GA-AL
16077	Power	ID	38540	Pocatello, ID
17057	Fulton	IL	37900	Peoria, IL
17087	Johnson	IL	16060	Carbondale-Marion, IL
18047	Franklin	IN	17140	Cincinnati, OH-KY-IN
18121	Parke	IN	45460	Terre Haute, IN
18171	Warren	IN	29200	Lafayette-West Lafayette, IN
19015	Boone	IA	11180	Ames, IA
19099	Jasper	IA	19780	Des Moines-West Des Moines, IA
20061	Geary	KS	31740	Manhattan, KS
21043	Carter	KY	26580	Huntington-Ashland, WV-KY-OH
22007	Assumption	LA	12940	Baton Rouge, LA
22067	Morehouse	LA	33740	Monroe, LA
25011	Franklin	MA	44140	Springfield, MA
26067	Ionia	MI	24340	Grand Rapids-Kentwood, MI
26155	Shiawassee	MI	29620	Lansing-East Lansing, MI
27075	Lake	MN	20260	Duluth, MN-WI
28031	Covington	MS	25620	Hattiesburg, MS
28051	Holmes	MS	27140	Jackson, MS
28131	Stone	MS	25060	Gulfport-Biloxi, MS

FIPS County Code	County/County Equivalent	State Name	New CBSA	Counties
29053	Cooper	MO	17860	Columbia, MO
29089	Howard	MO	17860	Columbia, MO
30095	Stillwater	MT	13740	Billings, MT
37007	Anson	NC	16740	Charlotte-Concord-Gastonia, NC-SC
37029	Camden	NC	47260	Virginia Beach-Norfolk-Newport News, VA-NC
37077	Granville	NC	20500	Durham-Chapel Hill, NC
37085	Harnett	NC	22180	Fayetteville, NC
39123	Ottawa	OH	45780	Toledo, OH
45027	Clarendon	SC	44940	Sumter, SC
47053	Gibson	TN	27180	Jackson, TN
47161	Stewart	TN	17300	Clarksville, TN-KY
48203	Harrison	TX	30980	Longview, TX
48431	Sterling	TX	41660	San Angelo, TX
51097	King And Queen	VA	40060	Richmond, VA
51113	Madison	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	Southampton	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
51620	Franklin City	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	Jackson	WV	16620	Charleston, WV
54065	Morgan	WV	25180	Hagerstown-Martinsburg, MD-WV
55069	Lincoln	WI	48140	Wausau-Weston, WI
72001	Adjuntas	PR	38660	Ponce, PR
72083	Las Marias	PR	32420	Mayagüez, PR

When calculating the area wage index, beginning with FY 2021, the wage data for providers located in these counties would be included in their new respective urban CBSAs. Typically, providers located in an urban area receive a wage index value higher than or equal to providers located in their state's rural area. We refer readers to section iii of this final rule for a discussion of the finalized wage index transition policy.

(d.) Urban Counties That Would Move to a Different Urban CBSA Under the New OMB Delineations

In certain cases, adopting the new OMB delineations would involve a change only in CBSA name and/or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19380 (Dayton, OH) would experience both a change to its number and its name, and become CBSA 19430 (Dayton-Kettering, OH), while all of its three constituent counties would remain the same. In other cases, only the name of the CBSA would be modified, and none of the currently assigned counties would be reassigned to a different urban CBSA. Table 4 shows the current CBSA code and our proposed CBSA code where we have proposed to change either the name or CBSA number only. We are not discussing further in this section these changes because they are inconsequential changes with respect to the IPF PPS wage index.

TABLE 4: Current CBSAs and their New CBSA Codes and Titles

New CBSA Code	New CBSA Title	Current CBSA Code	Current CBSA Title
10540	Albany-Lebanon, OR	10540	Albany, OR
11500	Anniston-Oxford, AL	11500	Anniston-Oxford-Jacksonville, AL
12060	Atlanta-Sandy Springs-Alpharetta, GA	12060	Atlanta-Sandy Springs-Roswell, GA
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock, TX
13460	Bend, OR	13460	Bend-Redmond, OR
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
14740	Bremerton-Silverdale-Port Orchard, WA	14740	Bremerton-Silverdale, WA
15380	Buffalo-Cheektowaga, NY	15380	Buffalo-Cheektowaga-Niagara Falls, NY
19430	Dayton-Kettering, OH	19380	Dayton, OH
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Mauldin, SC
25060	Gulfport-Biloxi, MS	25060	Gulfport-Biloxi-Pascagoula, MS
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Beaufort, SC
28700	Kingsport-Bristol, TN-VA	28700	Kingsport-Bristol-Bristol, TN-VA
31860	Mankato, MN	31860	Mankato-North Mankato, MN
33340	Milwaukee-Waukesha, WI	33340	Milwaukee-Waukesha-West Allis, WI
34940	Naples-Marco Island, FL	34940	Naples-Immokalee-Marco Island, FL
35660	Niles, MI	35660	Niles-Benton Harbor, MI
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Hayward-Berkeley, CA
36500	Olympia-Lacey-Tumwater, WA	36500	Olympia-Tumwater, WA
38060	Phoenix-Mesa-Chandler, AZ	38060	Phoenix-Mesa-Scottsdale, AZ
39150	Prescott Valley-Prescott, AZ	39140	Prescott, AZ
23224	Frederick-Gaithersburg-Rockville, MD	43524	Silver Spring-Frederick-Rockville, MD
44420	Staunton, VA	44420	Staunton-Waynesboro, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45940	Trenton-Princeton, NJ	45940	Trenton, NJ
46700	Vallejo, CA	46700	Vallejo-Fairfield, CA
47300	Visalia, CA	47300	Visalia-Porterville, CA
48140	Wausau-Weston, WI	48140	Wausau, WI
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL

In some cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. We consider this type of change, where CBSAs are split into multiple new CBSAs, or a CBSA loses one or more counties to another urban CBSA to be significant modifications.

Table 5 lists the urban counties that will move from one urban CBSA to another newly created or modified CBSA if we adopt the new OMB delineations.

TABLE 5: Urban Counties That Would Move to a Newly Proposed or Modified CBSA Under Revised OMB Delineations

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Proposed CBSA Code	Proposed CBSA Name
17031	Cook	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17043	Du Page	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17063	Grundy	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17093	Kendall	IL	16974	Chicago-Naperville-Arlington Heights, IL	20994	Elgin, IL
17111	Mc Henry	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17197	Will	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
34023	Middlesex	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34025	Monmouth	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34029	Ocean	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34035	Somerset	NJ	35084	Newark, NJ-PA	35154	New Brunswick-Lakewood, NJ
36027	Dutchess	NY	20524	Dutchess County-Putnam County, NY	39100	Poughkeepsie-Newburgh-Middletown, NY
36071	Orange	NY	35614	New York-Jersey City-White Plains, NY-NJ	39100	Poughkeepsie-Newburgh-Middletown, NY
36079	Putnam	NY	20524	Dutchess County-Putnam County, NY	35614	New York-Jersey City-White Plains, NY-NJ
47057	Grainger	TN	28940	Knoxville, TN	34100	Morristown, TN
54043	Lincoln	WV	26580	Huntington-Ashland, WV-KY-OH	16620	Charleston, WV
72055	Guanica	PR	38660	Ponce, PR	49500	Yauco, PR
72059	Guayanilla	PR	38660	Ponce, PR	49500	Yauco, PR
72111	Penuelas	PR	38660	Ponce, PR	49500	Yauco, PR
72153	Yauco	PR	38660	Ponce, PR	49500	Yauco, PR

We have identified 49 IPF providers located in the affected counties listed in Table 5. If providers located in these counties move from one CBSA to another under the revised OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values.

We received mixed comments on the proposal to adopt the revised CBSA delineations. Several commenters recognized the impact of these delineation changes, and some commenters were supportive of this action, while others voiced concerns.

Comment: One commenter recommended that CMS delay changes to the labor market delineations until FY 2022 to ensure that providers stay focused on the COVID–19 Public Health Emergency (PHE).

Response: The methodology for determining Medicare payments to providers uses the most recent data available. We recognize the impact that the COVID–19 PHE is having on all providers, which is why we have issued waivers and flexibilities to ease burden and allow providers to respond effectively during the COVID–19 PHE. As we have previously stated, implementing the updated wage index values along with the revised OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. Delaying the implementation of these provisions would mean delaying substantial wage index increases for some facilities whose wage index values have not been representative of actual costs of labor in that area. For those providers whose wage index would decrease as a result of the proposed changes, we have stated our belief that it is appropriate to provide a transition period to mitigate the resulting short-term instability and negative impacts on these providers, providing time for them to adjust to their new labor market area delineations and wage index values. This approach is discussed in further detail below in section III.D.1.b.iii of this final rule.

Comment: One commenter suggested that the adoption of the New Brunswick-Lakewood, New Jersey CBSA would result in a reduction in reimbursement for the four New Jersey

counties that would make up the new CBSA and recommended that CMS delay finalizing the proposal to implement the new OMB delineations.

Response: We appreciate the detailed concerns sent in by the commenter regarding the impact of implementing the New Brunswick-Lakewood, NJ CBSA designation on their specific counties. We understand the commenter's concern regarding the potential financial impact; however, we believe that implementing the revised OMB delineations will create more accurate representations of labor market areas and result in IPF wage index values being more representative of the actual costs of labor in a given area. We note that there are many geographic locations and IPF providers that will experience positive impacts upon implementation of the revised CBSA designations. Therefore, we believe that the OMB standards for delineating Metropolitan and Micropolitan Statistical Areas are appropriate for determining wage area differences and that the values computed under the revised delineations will result in more appropriate payments to providers by more accurately accounting for and reflecting the differences in area wage levels.

We recognize that there are areas that will experience a decrease in their wage index. As such, it is our longstanding policy to provide a temporary transition to mitigate negative impacts from the adoption of new policies or procedures. In the FY 2021 IPF proposed rule, we proposed a two-year transition in order to mitigate the resulting short-term instability and negative impacts on certain providers and to provide time for providers to adjust to their new labor market delineations. We proposed that in the first year, FY 2021, a 5-percent cap on wage index decreases would be applied for all providers, and in the second year there would be no cap on decreases to a provider's wage index value. We continue to believe that the one-year 5-percent cap transitional policy provides an adequate safeguard against any significant payment reductions, allows for sufficient time to make operational changes for future FYs, and provides a reasonable balance between mitigating some short-term instability in IPF payments and improving the accuracy of the payment adjustment for differences in area wage levels. Therefore, we believe that it is appropriate to implement the new OMB delineations without delay.

Final Decision: For FY 2021, we are finalizing the proposal to adopt the revised CBSA delineations based on OMB Bulletin No. 18–04 in order to determine the wage index for all IPF providers.

(iii) Transition Policy for Providers Negatively Impacted by Wage Index Changes

Overall, we believe implementing updated wage index values along with the revised OMB delineations will result in wage index values being more representative of the actual costs of labor in a given area. However, we recognize that implementing these wage index changes will have distributional effects among IPF providers, and that some providers will experience decreases in wage index values as a result of our proposals. Therefore, we believe it would be appropriate to consider, as we have in the past, whether or not a transition period should be used to implement these finalized changes to the wage index.

We considered having no transition period and fully implementing the updated wage index values and new OMB delineations beginning in FY 2021. This would mean that we would adopt the updated wage index and revised OMB delineations for all providers on October 1, 2020. However, this would not provide any time for providers to adapt to the new OMB delineations or wage index values. As previously stated, some providers will experience a decrease in wage index due to implementation of the finalized new OMB delineations and wage index updates. Thus, we believe that it would be appropriate to provide for a transition period to mitigate the resulting short-term instability and negative impacts on these providers to provide time for them to adjust to their new labor market area delineations and wage index values. Furthermore, in light of the comments received during the RY 2007 and FY 2016 rulemaking cycles on our proposals to adopt revised CBSA definitions without a transition period, we believe that a transition period is appropriate for FY 2021.

We considered transitioning the finalized wage index changes over a number of years to minimize their impact in a given year. However, as discussed in the FY 2016 IPF PPS final rule (80 FR 46689), we continue to believe that a longer transition period would reduce the accuracy of the overall labor market area wage index system. The wage index is a relative measure of the value of labor in prescribed labor market areas; therefore, we believe it is important to implement the new delineations with as minimal a transition as is reasonably possible. As such, we believe that utilizing a 2-year (rather than a multiple year) transition period would strike the most appropriate balance between giving providers time to adapt to the new wage index changes while maintaining the accuracy of the overall labor market area wage index system.

We considered a transition methodology similar to that used to address past decreases in the wage index, as in FY 2016 (80 FR 46689) when major changes to CBSA delineations were introduced. Under that methodology, all IPF providers would receive a 1-year blended wage index using 50 percent of their FY 2021 wage index based on the proposed new OMB delineations and 50 percent of their FY 2021 wage index based on the OMB delineations used in FY 2020. However, if we were to propose a similar blended adjustment for FY 2021, we would have to calculate wage indexes for all providers using both old and new labor market definitions even though the blended wage index would only apply to providers that experienced a decrease in wage index values due to a change in labor market area definitions.

Because of the administrative complexity involved in implementing a blended adjustment, we decided to consider alternative transition methodologies that might provide greater transparency. Moreover, for FY 2021, we are not proposing the same transition policy we established in FY 2016 when we adopted new OMB delineations based on the decennial census data. However, consistent with our past practice of using transition policies to help mitigate negative impacts on hospitals of certain wage index proposals, we do believe it is appropriate to propose a transition policy for our proposed implementation of the revised OMB delineations.

In the proposed rule (85 FR 20638 through 20639) we stated that we believe adopting a transition of the 5-percent cap on a decrease in an IPFs wage index from the IPF's final wage index from the prior FY is an appropriate transition for FY 2021 for the revised OMB delineations as it provides greater transparency and consistency with other payment systems. We stated that this 2-year transition would allow the adoption of the revised CBSA delineations to be phased in over 2 years, where the estimated reduction in an IPF's wage index would be capped at 5 percent in FY 2021. We noted that this approach strikes an appropriate balance by providing for a transition period to mitigate the resulting short-term instability and negative impacts on these providers and provide time for

them to adjust to their new labor market area delineations and wage index values. We indicated that no cap would be applied to the reduction in the wage index for the second year, that is, FY 2022.

Comment: MedPAC suggested alternatives to the 5-percent cap transition policy. MedPAC recommended that the 5-percent cap limit should apply to both increases and decreases in the wage index because they believe that no provider should have its wage index value increase or decrease by more than 5 percent for FY 2021.

Response: We appreciate MedPAC's suggestion that the cap on wage index movements of more than 5 percent should also be applied to increases in the wage index. We do not believe it would be appropriate to apply the 5-percent cap on wage index increases as well. As we discussed in the FY 2021 IPF PPS proposed rule (85 FR 20638), the purpose of the proposed transition policy, as well as those we have implemented in the past, is to help mitigate the significant negative impacts of certain wage index changes, not to curtail the positive impacts of such changes.

Final Decision: For FY 2021, we are finalizing the proposal to implement a 2-year transition to mitigate any negative effects of wage index changes by applying a 5-percent cap on any decrease in an IPF's wage index from the IPF's final wage index from the prior FY.

Following the rationale outlined in the FY 2020 IPPS/LTCH PPS final rule (84 FR 42336), we continue to believe 5 percent is a reasonable level for the cap because it will effectively mitigate any significant decreases in the wage index for FY 2021. Therefore, for FY 2021, we are finalizing our proposal to provide for a transition of a 5-percent cap on any decrease in an IPF's wage index from the IPF's final wage index from the prior FY, which is FY 2020. Consistent with the application of the 5-percent cap transition provided in FY 2020 for the IPPS, this 5-percent cap on wage index decreases will be applied to all IPF providers that have any decrease in their wage indexes, regardless of the circumstance causing the decline, so that an IPF's final wage index for FY 2021 will not be less than 95 percent of its final wage index for FY 2020, regardless of whether the IPF is part of an updated CBSA.

e. Adjustment for Rural Location

In the November 2004 IPF PPS final rule, (69 FR 66954) we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. This 17 percent adjustment has been part of the IPF PPS each year since the inception of the IPF PPS. For FY 2021, we are finalizing our proposal to continue to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C) (see 69 FR 66954) for a complete discussion of the adjustment for rural locations.

f. Budget Neutrality Adjustment

Changes to the wage index are made in a budget-neutral manner so that updates do not increase expenditures. Therefore, for FY 2021, we are continuing to apply a budget-neutrality adjustment in accordance with our existing budget-neutrality policy. This policy requires us to update the wage index in such a way that total estimated payments to IPFs for FY 2021 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the IPF PPS rates. We use the following steps to ensure that the rates reflect the update to the wage indexes (based on the FY 2016 hospital cost report data) and the labor-related share in a budget-neutral manner:

Step 1. Simulate estimated IPF PPS payments, using the FY 2020 IPF wage index values (available on the CMS website) and labor-related share (as published in the FY 2020 IPF PPS final rule (84 FR 38424)).

Step 2. Simulate estimated IPF PPS payments using the finalized FY 2021 IPF wage index values (available on the CMS website) and final FY 2021 labor-related share (based on the latest available data as discussed previously).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2021 budget-neutral wage adjustment factor of 0.9989.

Step 4. Apply the FY 2021 budget-neutral wage adjustment factor from step 3 to the FY 2020 IPF PPS federal per diem base rate after the application of the market basket update described in section III.A of this rule, to determine the FY 2021 IPF PPS federal per diem base rate.

2. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census (ADC).

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable,'' which is (1 + (the number of FTE residents training in the IPF/the IPF's ADC)). The teaching variable is then raised to 0.5150 power to result in the teaching adjustment. This formula is subject to the limitations on the number of FTE residents, which are described in this section of this rule.

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (publication date of the IPF PPS final rule). A complete discussion of the temporary adjustment to the FTE cap to reflect residents due to hospital closure or residency program closure appears in the RY 2012 IPF PPS proposed rule (76

FR 5018 through 5020) and the RY 2012 IPF PPS final rule (76 FR 26453 through 26456).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the RY 2009 IPF PPS notice (73 FR 25721). As with other adjustment factors derived through the regression analysis, we do not plan to rerun the teaching adjustment factors in the regression analysis until we more fully analyze IPF PPS data as part of the IPF PPS refinement we discuss in section IV of this rule. Therefore, in this FY 2021 final rule, we will continue to retain the coefficient value of 0.5150 for the teaching adjustment to the federal per diem base rate.

3. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the area in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare prospective payment systems (for example: The IPPS and LTCH PPS) adopted a COLA to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the non-labor-related portion of the federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors through 2009 were published by the Office of Personnel Management (OPM), and the OPM memo showing the 2009 COLA factors is available at *https://www.chcoc.gov/content/nonforeign-area-retirement-equity-assurance-act.*

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- Rest of the state of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for FY 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of NDAA, locality pay was phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the RY 2012 IPF PPS proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates, which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for RY 2010 through RY 2014.

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), we established a new methodology to update the COLA factors for Alaska and Hawaii, and adopted this methodology for the IPF PPS in the FY 2015 IPF final rule (79 FR 45958 through 45960). We adopted this new COLA methodology for the IPF PPS because IPFs are hospitals with a similar mix of commodities and services. We think it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, the IPF COLAs for FY 2015 through FY 2017 were the same as those applied under the IPPS in those years. As finalized in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53700 and 53701), the COLA updates are determined every 4 years, when the IPPS market basket labor-related share is updated. Because the labor-related share of the IPPS market basket was updated for FY 2018, the COLA factors were updated in FY 2018 IPPS/LTCH rulemaking (82 FR 38529). As such, we also updated the IPF PPS COLA factors for FY 2018 (82 FR 36780 through 36782) to reflect the updated COLA factors finalized in the FY 2018 IPPS/LTCH rulemaking. We are continuing to apply the same COLA factors in FY 2021 that were used in FY 2018 through FY 2020.

TABLE 6: Comparison of IPF PPS Cost-of-Living Adjustment Factors: IPFs Located in Alaska and Hawaii

Area	FY 2015 through FY 2017	FY 2018 through FY 2020
Alaska:		
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23	1.25
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23	1.25
City of Juneau and 80-kilometer (50-mile) radius by road	1.23	1.25
Rest of Alaska	1.25	1.25
Hawaii:		
City and County of Honolulu	1.25	1.25
County of Hawaii	1.19	1.21
County of Kauai	1.25	1.25
County of Maui and County of Kalawao	1.25	1.25

The final IPF PPS COLA factors for FY 2021 are also shown in Addendum A to this final rule, and are available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

4. Adjustment for IPFs with a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a psychiatric hospital with a qualifying ED or an excluded psychiatric unit of an IPPS hospital or a CAH, for preadmission services otherwise payable under the Medicare Hospital Outpatient Prospective Payment System (OPPS), furnished to a beneficiary on the date of the beneficiary's admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)), and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception which we described), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. Those IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described in this section of the final rule. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an IPPS hospital or CAH and admitted to the same IPPS hospital's or CAH's excluded psychiatric unit. We clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the IPPS hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an IPPS hospital or CAH and admitted to the same hospital's or CAH's excluded psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF. For FY 2021, we are finalizing our proposal to continue to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factors are in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the RY 2007 IPF PPS final rule (71 FR 27070 through 27072).

E. Other Payment Adjustments and Policies

1. Outlier Payment Overview

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require costlier care, and therefore, reduce the incentives for IPFs to under-serve these patients. We make outlier payments for discharges in which an IPF's estimated total cost for a case (which is calculated by multiplying the IPF's overall cost-to-charge ratio (CCR) by the Medicare allowable covered charge) exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. The adjusted threshold amount is equal to the outlier threshold amount adjusted for wage area, teaching status, rural area, and the COLA adjustment (if applicable), plus the amount of the Medicare IPF payment for the case. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to

increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total estimated IPF PPS payments.

2. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy, which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the federal per diem base rate for all other cases that are not outlier cases.

Based on an analysis of the latest available data (the March 2020 update of FY 2019 IPF claims and most recent CCRs from the CY 2020 Provider Specific File) and rate increases, we believe it is necessary to update the fixed dollar loss threshold amount to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments. We are updating the IPF outlier threshold amount for FY 2021 using FY 2019 claims data and the same methodology that we used to set the initial outlier threshold amount in the RY 2007 IPF PPS final rule (71 FR 27072 and 27073), which is also the same methodology that we used to update the outlier threshold amounts for years 2008 through 2020. In the proposed rule (85 FR 20642), based on an analysis of the December 2019 update of these data, we originally estimated that IPF outlier payments as a percentage of total estimated payments are approximately 2.2 percent in FY 2020. Therefore, we proposed to update the outlier threshold amount to $16,520 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2021.

Comment: We received one comment that opposed increasing the fixed dollar threshold amount for 2 years in a row in order to maintain the 2 percent outlier policy. The commenter also acknowledged that an increase in the threshold is necessary, but stated that it should be limited to no more than 5 percent in any given year.

Response: The outlier fixed dollar threshold amount is calculated by simulating aggregate payments and using an iterative process to determine a threshold that results in outlier payments being equal to 2 percent of total payments under the simulation. To determine the IPF outlier threshold amount for FY 2021, we estimated the FY 2021 IPF PPS aggregate and outlier payments using the most recent claims available (March 2020 update of the FY 2019 MedPAR claims), the latest CCRs from the Provider Specific File, and the FY 2021 final payment rates. The outlier threshold was varied in this simulation until estimated outlier payments equaled 2 percent of estimated aggregate payments. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy in our November 2004 IPF PPS final rule (69 FR 66960 through 66962), which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the federal per diem base rate for all other cases that are not outlier cases. This outlier fixed dollar loss threshold update methodology is based on longstanding IPF payment policy and is described in detail in the RY 2007 IPF PPS final rule (71 FR 27072 and 27073).

Based on an analysis of the latest updated data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 1.9 percent in FY 2020. Therefore, we are finalizing to update the outlier threshold amount to $14,630 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2021. This final rule update is a decrease from the FY 2020 threshold of $14,960. To maintain this established 2 percent outlier policy, we must raise or lower the IPF PPS outlier fixed dollar threshold amount as indicated by the latest updated data. If the fixed dollar threshold amount increase were limited to 5 percent for any year, as suggested by the commenter, we would not meet the established 2 percent outlier policy if the data indicated that a greater increase to the fixed dollar loss threshold were required.

Final Decision: We are finalizing the annual updates in accordance with existing policy.

3. Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio. This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the FY 2004 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for IPPS hospitals, because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule (69 FR 66961), we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS; therefore, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule:

- Calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas.
- Computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the most recent Provider Specific File available.

For FY 2021, we are finalizing to continue to follow this methodology.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2021 is 2.0082 for rural IPFs, and 1.7131 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate, and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national median CCRs to the following situations:

- New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national median CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.
- IPFs whose overall CCR is in excess of three standard deviations above the corresponding national geometric mean (that is, above the ceiling).

• Other IPFs for which the Medicare Administrative Contractor (MAC) obtains inaccurate or incomplete data with which to calculate a CCR.

We are continuing to update the FY 2021 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2021, to be used in each of the three situations listed previously, using the most recent CCRs entered in the CY 2020 Provider Specific File, we provide an estimated national median CCR of 0.5720 for rural IPFs and a national median CCR of 0.4200 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations. A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

IV. Update on IPF PPS Refinements

For RY 2012, we identified several areas of concern for future refinement, and we invited comments on these issues in the RY 2012 IPF PPS proposed and final rules. For further discussion of these issues and to review the public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

We have delayed making refinements to the IPF PPS until we have completed a thorough analysis of IPF PPS data on which to base those refinements. Specifically, we would delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We have begun and will continue the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS in the future, as appropriate. Our preliminary analysis has also revealed variation in cost and claim data, particularly related to labor costs, drugs costs, and laboratory services. Some providers have very low labor costs, or very low or missing drug or laboratory costs or charges, relative to other providers. As we noted in the FY 2016 IPF PPS final rule (80 FR 46693 through 46694), our preliminary analysis of 2012 to 2013 IPF data found that over 20 percent of IPF stays reported no ancillary costs, such as laboratory and drug costs, in their cost reports, or laboratory or drug charges on their claims. Because we expect that most patients requiring hospitalization for active psychiatric treatment would need drugs and laboratory services, we again remind providers that the IPF PPS federal per diem base rate includes the cost of all ancillary services, including drugs and laboratory services.

On November 17, 2017, we issued Transmittal 12, which made changes to the hospital cost report form CMS–2552–10 (OMB No. 0938–0050), and included the requirement that cost reports from psychiatric hospitals include certain ancillary costs, or the cost report will be rejected. On January 30, 2018, we issued Transmittal 13, which changed the implementation date for Transmittal 12 to be for cost reporting periods ending on or after September 30, 2017. For details, we refer readers to see these Transmittals, which are available on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/index.html.* CMS suspended the requirement that cost reports from psychiatric hospitals include certain ancillary costs effective April 27, 2018, in order to consider excluding all-inclusive rate providers from this requirement. CMS issued Transmittal 15 on October 19, 2018, reinstating the requirement that cost reports from psychiatric hospitals, except all-inclusive rate providers, include certain ancillary costs.

We only pay the IPF for services furnished to a Medicare beneficiary who is an inpatient of that IPF (except for certain professional services), and payments are considered to be payments in full for all inpatient hospital services provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

V. Special Requirements for Psychiatric Hospitals (§ 482.61(d))

In the CMS interim final rule with comment period, ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'' (85 FR 19230) (''IFC''), published on April 6, 2020, we revised the provision at § 482.61(d) in the ''Special Medical Record Requirements for Psychiatric Hospitals'' conditions of participation (CoP) by deleting an inappropriate reference to § 482.12(c), and deleting the modifier ''independent'' from the term ''licensed independent practitioner(s).''

This and other revisions in the April 6, 2020 IFC reflect our belief that advanced practice providers (APPs), including physician assistants (PAs), nurse practitioners (NPs), psychologists, and clinical nurse specialists (CNSs) (as well as other qualified, licensed practitioners to whom this revision may also be applicable), when acting in accordance with state law, their scope of practice, and hospital policy, should have the authority to practice more broadly and to the highest level of their education, training, and qualifications as allowed under their respective state requirements and laws in this area. Additionally, non-physician practitioners practicing in the psychiatric hospital setting should be able to record progress notes of psychiatric patients for whom they are responsible. Therefore, we now allow the use of non-physician practitioners, or APPs, to document progress notes of patients receiving services in psychiatric hospitals, in addition to medical doctors, doctors of osteopathy (MDs)/(DOs) as is currently allowed.

Given the changes made to the requirements under § 482.13 regarding the removal of the word ''independent'' from the phrase ''licensed independent practitioner'' when referencing non-physician practitioners that we previously discussed in the final rule published on September 30, 2019 **Federal Register** (the ''Medicare and Medicaid Programs; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care'' final rule (84 FR 51775)), we have made the same change for this provision at § 482.61(d) in the April 6, 2020 IFC. We believe that the regulatory language should be as consistent as possible throughout the hospital CoPs and with the requirement under § 482.13. We also believe using the term ''licensed independent practitioner'' may inadvertently exacerbate workforce shortage concerns, and unnecessarily impose regulatory burden on hospitals by restricting a hospital's ability to allow APPs and other non-physician practitioners to operate within the scope of practice allowed by state law. In addition, we believe it does not recognize the benefits to patient care that might be derived from fully utilizing APPs and their clinical skills to the highest levels of their training, education, and experience, as allowed by hospital policy in accordance with state law.

In response to the April 6, 2020 IFC, we received several public comments from patient advocacy organizations as well as professional organizations and societies. The comments were generally supportive of the changes and are as follows:

Comment: Several commenters fully supported the changes made regarding APPs, expressed appreciation for CMS recognizing the changing dynamics of the healthcare system for both patients and for those practicing within it, and encouraged CMS to continue to evaluate other regulatory barriers limiting efficient practice by APPs. One

commenter expressed appreciation for the clarification that now allows non-physician practitioners to practice to the full extent of their licenses and certifications in the psychiatric hospital setting. The commenter referenced evidence of the safe practice of nurse practitioners and other practitioners in other settings, which the commenter stated confirms that this change is appropriate to make for psychiatric hospitals. Another commenter expressed appreciation for this increased flexibility and asked CMS to consider other Medicare regulations for future revisions, particularly those that might limit other types of advanced practice nurses from practicing to the full extent of their licenses, such as those practicing in oncology.

Response: We thank the commenters for their support of these changes and agree that evidence supports allowing these practitioners to practice to full extent of their training, education, and qualifications. Since the revisions discussed here are limited in scope to the psychiatric hospital CoP, we can only address the requirements for APPs, which we note currently allow APPs, regardless of area of practice, to practice to the full extent of their respective state laws and licenses and as allowed by their respective hospitals. However, we will continue to review the CoPs for other provider-types.

Comment: A few commenters, while supportive of these changes, emphasized that APPs, while practicing in accordance with state scope-of-practice laws, must also continue to practice as part of physician-led teams and that CMS should reinstate general supervision of APPs by physicians after the expiration of the current PHE declaration period. These commenters also stated that they believe the current revisions to allow for APPs to document progress notes for patients in psychiatric hospitals for whom they are responsible should only be temporary for the duration of the PHE.

Response: We appreciate the qualified support expressed by commenters and agree that APPs should practice in accordance with their respective state laws with regard to their roles on physician-led teams. However, we respectfully disagree that the changes made in the April 6, 2020 IFC should only be temporary in nature. Further, with regard to the revisions to the hospital CoPs discussed here, we defer to state law and hospital policy regarding the requirement of general supervision of APPs by physicians.

Final Decision: After consideration of the public comments, we are confirming as final the revisions to the provision at § 482.61(d) in the ''Special Medical Record Requirements for Psychiatric Hospitals'' CoP published in the April 6, 2020 IFC (85 FR 19230), without change.

VI. Collection of Information Requirements

This rule finalizes proposed updates to the prospective payment rates, outlier threshold, and wage index for Medicare inpatient hospital services provided by IPFs. It also finalizes our proposal to expand the IPPS wage index disparities policy and revise CBSA delineations. While discussed in section IV (Update on IPF PPS Refinements) of this preamble, the active requirements and burden associated with our hospital cost report form CMS–2552–10 (OMB control number 0938–0050) are unaffected by this rule. At § 482.61(d), this rule will allow licensed non-physician practitioners (specifically PAs, NPs, and CNSs) to document progress notes in accordance with state laws and scope-of-practice requirements. The recording of progress notes is not new as it is currently allowed by medical doctors and doctors of osteopathy. We believe that the recording of progress notes is a usual and customary practice that would be performed in the absence of federal regulation. In that regard it is not subject (see 5 CFR 1320.3(b)(2)) to the requirements of the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*).

Since this rule does not impose any new or revised collection of information requirements/burden, the rule is not subject to the requirements of the PRA. With respect to this section of the preamble, ''collection of information'' is defined under 5 CFR 1320.3(c) of OMB's implementing regulations.

VII. Regulatory Impact Analysis

A. Statement of Need

This rule finalizes updates to the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during FY 2021 (October 1, 2020 through September 30, 2021). We are finalizing our proposal to apply the 2016-based IPF market basket increase of 2.2 percent, less the productivity adjustment of 0 percentage point as required by 1886(s)(2)(A)(i) of the Act resulting in a final FY 2021 IPF payment rate update of 2.2 percent. In this final rule, we are updating the IPF labor-related share and the IPF wage index to reflect the FY 2021 hospital inpatient wage index, and adopting more recent Office of Management and Budget (OMB) statistical area delineations.

B. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security Act (the Act), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

We estimate that this rulemaking is not economically significant as measured by the $100 million threshold, and hence not a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

We estimate that the total impact of these changes for FY 2021 payments compared to FY 2020 payments will be

a net increase of approximately $95 million. This reflects a $90 million increase from the update to the payment rates ($90 million increase from the second quarter 2020 IGI forecast of the 2016-based IPF market basket of 2.2 percent, and a $0 reduction for the productivity adjustment of 0 percentage point), as well as a $5 million increase as a result of the update to the outlier threshold amount. Outlier payments are estimated to change from 1.9 percent in FY 2020 to 2.0 percent of total estimated IPF payments in FY 2021.

C. Detailed Economic Analysis

In this section, we discuss the historical background of the IPF PPS and the impact of this final rule on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and RY 2007 IPF PPS final rules, we applied a budget neutrality factor to the federal per diem base rate and ECT payment per treatment to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the RY 2009 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

As discussed in section III.D.1 of this final rule, we are updating the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the federal per diem base rate and ECT payment per treatment. Therefore, the budgetary impact to the Medicare program of this final rule will be due to the market basket update for FY 2021 of 2.2 percent (see section III.A.4 of this final rule) less the productivity adjustment of 0 percentage point required by section 1886(s)(2)(A)(i) of the Act and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2021 impact will be a net increase of $95 million in payments to IPF providers. This reflects an estimated $90 million increase from the update to the payment rates and a $5 million increase due to the update to the outlier threshold amount to set total estimated outlier payments at 2.0 percent of total estimated payments in FY 2021. This estimate does not include the implementation of the required 2.0 percentage point reduction of the market basket increase factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section V.A. of this final rule).

2. Impact on Providers

To show the impact on providers of the changes to the IPF PPS discussed in this final rule, we compare estimated payments under the IPF PPS rates and factors for FY 2021 versus those under FY 2020. We determined the percent change in the estimated FY 2021 IPF PPS payments compared to the estimated FY 2020 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount; the updated wage index data including the updated labor-related share; the adoption of the revised CBSA delineations based on the OMB Bulletin No. 18–04 published September 14, 2018; the implementation of the 2 year transition with a 5-percent cap on decreases to providers' wage index values; and the market basket update for FY 2021, as adjusted by the productivity adjustment according to section 1886(s)(2)(A)(i) of the Act.

To illustrate the impacts of the FY 2021 changes in this final rule, our analysis begins with FY 2019 IPF PPS claims (based on the 2019 MedPAR claims, March 2020 update). We estimate FY 2020 IPF PPS payments using these 2019 claims and the finalized FY 2020 IPF PPS federal per diem base rates and the finalized FY 2020 IPF PPS patient and facility level adjustment factors (as published in the FY 2020 IPF PPS final rule (84 FR 38424 through 38482)). We then estimate the FY 2020 outlier payments based on these simulated FY 2020 IPF PPS payments using the same methodology as finalized in the FY 2020 IPF PPS final rule (84 FR 38457) where total outlier payments are maintained at 2 percent of total estimated FY 2020 IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount.
- The FY 2021 IPF wage index and the FY 2021 labor-related share.
- The adoption of the revised CBSAs based on OMB Bulletin No. 18–04 and the 5-percent cap on decreases to the wage index for providers whose wage index decreases from FY 2020.
- The market basket update for FY 2021 of 2.2 percent less the productivity adjustment of 0 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act for a payment rate update of 2.2 percent.

Our final column comparison in Table 7 illustrates the percent change in payments from FY 2020 (that is, October 1, 2019, to September 30, 2020) to FY 2021 (that is, October 1, 2020, to September 30, 2021) including all the payment policy changes in this final rule.

TABLE 7: FY 2021 IPF PPS Final Payment Impacts
[Percent Change in Columns 3 through 6]

Facility by Type	Number of Facilities	Outlier	Wage Index FY21	Wage Index FY21 New CBSA and 5% Loss Cap	Total Percent Change[1]
(1)	(2)	(3)	(4)	(5)	(6)
All Facilities	1,550	0.1	0.0	0.0	2.3
Total Urban	1,241	0.1	0.0	0.0	2.3
Urban unit	755	0.1	0.0	0.1	2.4
Urban hospital	486	0.0	0.0	-0.1	2.2
Total Rural	309	0.0	-0.1	-0.1	2.0
Rural unit	248	0.0	-0.2	-0.2	1.9
Rural hospital	61	0.0	0.0	0.0	2.2
By Type of Ownership:					
Freestanding IPFs					
Urban Psychiatric Hospitals					
Government	118	0.1	0.3	0.1	2.7
Non-Profit	96	0.0	0.1	-0.1	2.2
For-Profit	272	0.0	0.0	-0.1	2.1
Rural Psychiatric Hospitals					
Government	31	0.0	0.0	0.0	2.2
Non-Profit	12	0.0	0.2	-0.1	2.4
For-Profit	18	0.0	0.0	0.0	2.2
IPF Units					
Urban					
Government	112	0.1	0.1	0.3	2.8
Non-Profit	492	0.1	0.0	0.1	2.4
For-Profit	151	0.0	-0.1	-0.1	2.1
Rural					
Government	63	0.0	-0.3	-0.1	1.8
Non-Profit	136	0.1	0.0	-0.2	2.1
For-Profit	49	0.0	-0.4	-0.2	1.7
By Teaching Status:					
Non-teaching	1,357	0.0	0.0	-0.1	2.1
Less than 10% interns and residents to beds	108	0.1	0.2	0.5	2.9
10% to 30% interns and residents to beds	65	0.1	0.1	0.2	2.7

More than 30% interns and residents to beds	20	0.2	0.4	0.0	2.7
By Region:					
New England	106	0.1	-0.9	-0.1	1.3
Mid-Atlantic	218	0.1	0.7	0.4	3.5
South Atlantic	243	0.0	0.0	0.0	2.2
East North Central	255	0.0	0.0	-0.1	2.2
East South Central	155	0.0	0.0	-0.1	2.1
West North Central	114	0.1	-0.6	0.0	1.6
West South Central	227	0.0	0.0	-0.1	2.1
Mountain	105	0.0	-0.6	-0.1	1.5
Pacific	127	0.1	0.3	-0.1	2.6
By Bed Size:					
Psychiatric Hospitals					
Beds: 0-24	87	0.0	0.1	0.0	2.3
Beds: 25-49	83	0.0	0.2	-0.1	2.3
Beds: 50-75	86	0.0	-0.3	-0.1	1.8
Beds: 76 +	291	0.0	0.1	-0.1	2.2
Psychiatric Units					
Beds: 0-24	561	0.1	-0.1	0.0	2.1
Beds: 25-49	260	0.1	-0.1	-0.1	2.1
Beds: 50-75	115	0.1	0.0	0.1	2.4
Beds: 76 +	67	0.1	0.4	0.6	3.3

[1] This column includes the impact of the updates in columns (3) through (5) above, and of the IPF market basket increase factor for FY 2021 (2.2 percent), reduced by 0 percentage point for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act.

3. Impact Results

Table 7 displays the results of our analysis. The table groups IPFs into the categories listed here based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from the Healthcare Cost Report Information System:

- Facility Type.
- Location.
- Teaching Status Adjustment.
- Census Region.
- Size.

The top row of the table shows the overall impact on the 1,550 IPFs included in this analysis. In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 1.9 percent in FY 2020. Thus, we are adjusting the outlier threshold amount in this final rule to set total estimated outlier payments equal to 2.0 percent of total payments in FY 2021. The estimated change in total IPF payments for FY 2021, therefore, includes an approximate 0.1 percent increase in payments because the outlier portion of total payments is expected to increase from approximately 1.9 percent to 2.0 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of Table 7), across all hospital groups, is to increase total estimated payments to IPFs by 0.1 percent. The largest increase in payments due to this change is estimated to be 0.2 percent for teaching IPFs with more than 30 percent interns and residents to beds.

In column 4, we present the effects of the budget-neutral update to the IPF wage index and the Labor-Related Share (LRS). This represents the effect of using the concurrent hospital wage data without taking into account the updated OMB delineations, or the 5-percent cap on decreases to providers' wage index values for providers whose wage index decreases from FY 2020 as discussed in section III.D.1.b.iii of this final rule. That is, the impact represented in this column reflects the update from the FY 2020 IPF wage index to the final FY 2021 IPF wage index, which includes basing the FY 2021 IPF wage index on the FY 2021 pre-floor, pre-reclassified IPPS hospital wage index data and updating the LRS from 76.9 percent in FY 2020 to 77.3 percent in FY 2021. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4, however, there will be distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be 0.7 percent for Mid-Atlantic IPFs, and the largest decrease in payments to be 0.9 percent for New England IPFs.

Next, column 5 shows the effect of the final update to the delineations used to identify providers as urban or rural providers and the CBSAs into which urban providers are classified. Additionally, column 5 shows the effect of the final five percent cap on wage index decreases in FY 2021 as discussed in section III.D.1.b.iii of this final rule. The new delineations will be based on the September 14, 2018 OMB Bulletin No. 18–04. In the aggregate, we do not estimate that these updates will affect overall estimated payments of IPFs since these changes will be implemented in a budget neutral manner. We observe that urban providers will experience no change in

payments and rural providers will see a 0.1 percent decrease in payments.

Finally, column 6 compares the total changes reflected in this final rule for FY 2021 to the estimates for FY 2020 (without these changes). The average estimated increase for all IPFs is approximately 2.3 percent. This estimated net increase includes the effects of the 2016-based IPF market basket update of 2.2 percent reduced by the productivity adjustment of 0 percentage point, as required by section 1886(s)(2)(A)(i) of the Act. It also includes the overall estimated 0.1 percent increase in estimated IPF outlier payments as a percent of total payments from the update to the outlier fixed dollar loss threshold amount. Column 6 also includes the distributional effects of the updates to the IPF wage index and the labor-related share whose impacts are displayed in columns 4 and 5.

IPF payments are estimated to increase by 2.3 percent in urban areas and 2.0 percent in rural areas. Overall, IPFs are estimated to experience a net increase in payments as a result of the updates in this final rule. The largest payment increase is estimated at 3.5 percent for IPFs in the Mid-Atlantic region.

4. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2021 IPF PPS, but we continue to expect that paying prospectively for IPF services will enhance the efficiency of the Medicare program.

5. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will be directly impacted and will review this final rule, we assume that the total number of unique commenters on the most recent IPF proposed rule from FY 2021 (85 FR 20625) will be the number of reviewers of this final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this final rule. It is possible that not all commenters reviewed the FY 2021 IPF proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons, we thought that the number of commenters would be a fair estimate of the number of reviewers who are directly impacted by this final rule. We did not receive any comments on this assumption.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this final rule; therefore, for the purposes of our estimate, we assume that each reviewer reads approximately 50 percent of this final rule.

Using the May, 2019 mean (average) wage information from the Bureau of Labor Statistics (BLS) for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this final rule is $110.74 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes119111.htm*). Assuming an average reading speed of 250 words per minute, we estimate that it would take approximately 49 minutes (0.82 hours) for the staff to review half of this final rule, given that there is a total of 24,480 words. For each IPF that reviews the final rule, the estimated cost is (0.82 hours × $110.74) or $90.36. Therefore, we estimate that the total cost of reviewing this final rule is $41,748.09 ($90.36 × 462 reviewers).

6. Special Requirements for Psychiatric Hospitals

In section V. of this final rule, we note that the existing requirements (prior to publication of the April 6, 2020 IFC) for psychiatric hospitals specified that progress notes must be recorded by the physicians(s), psychologists, or other ''licensed independent practitioner(s)'' responsible for the care of the patient. We believe that this provision required clarification and revision since the regulatory language was inconsistent with other recent changes finalized throughout the hospital CoPs as this provision applies to APPs, including PAs, NPs, clinical psychologists, and CNSs.

Continued use of this outdated term (''licensed independent practitioner(s)'') may inadvertently exacerbate workforce shortage concerns, and also might unnecessarily impose regulatory burden on hospitals, especially psychiatric hospitals, by restricting a hospital's ability to allow APPs to operate within the scope of practice allowed by state law. We believe that the previous regulation failed to recognize the benefits to patient care that might be derived from fully utilizing APPs and their clinical skills to the highest levels of their training, education, and experience as allowed by hospital policy in accordance with state law.

Therefore, we have removed the term ''licensed independent practitioner(s)'' (along with an inappropriate reference to § 482.12(c)) from the regulations. We believe that this revision is non-controversial, and that the public interest will be served by permitting a greater scope of practice for professionals in the psychiatric hospital context and further believe that these trained and qualified practitioners, when acting in accordance with state law, their scope of practice, and hospital policy, should have the authority to record progress notes of psychiatric patients for whose care they are responsible.

At § 482.61(d), we now allow non-physician practitioners, or APPs, to document progress notes in accordance with state laws and scope-of-practice requirements. We believe that clarification of the intent of the regulation is necessary and will result in non-physician practitioners (specifically PAs, NPs, and CNSs) documenting in the progress notes for patients receiving services in psychiatric hospitals.

We estimate that MDs/DOs currently spend approximately 30 minutes documenting progress notes in psychiatric hospitals, and that 33 percent of this time would be covered by non-physician practitioners. Of the 4,823 Medicare participating hospitals, approximately 620 (or 13 percent) are psychiatric hospitals. According to the American Hospital Association (AHA), there were 36,510,207 inpatient hospital stays in 2017, and therefore, an estimated 13 percent of these stays were at psychiatric hospitals.

Using May 2019 BLS data, we have obtained estimates of the national average hourly wage for Nurse Practitioners (29–1171), Physician Assistants (29–1071), Family Medicine Physicians (29–1215), General Internal Medicine Physicians (29–1216), and Psychiatrists (29–1223) in Psychiatric and Substance Abuse Hospitals (NAICS 622200). Using BLS employment numbers, we calculated a weighted average hourly wage for physicians/psychiatrists and for non-physician practitioners (NPs and PAs). We have adjusted these rates by adding 100 percent to the hourly wage to account for overhead costs and fringe benefit costs.

We estimate that this change in behavior will result in an annual savings of $176.8 million (4,746,327 psychiatric hospital stays × 2 progress notes per stay × 0.5 hours of physician/psychiatrist time × $112.88 per hourly wage difference between physicians/psychiatrists ($218.22) and non-physician practitioners ($105.34) × 33

percent of physician time spent writing progress notes covered by non-physician practitioners, or APPs), as shown in the Accounting Statement, Table 8, below. We note that there is some ambiguity in attributing these savings across the several rulemakings—Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (CoPs), (83 FR 47686); the April 6, 2020 IFC; and this final rule—that all address the progress note recording requirement.

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule; applying the 2016-based IPF PPS market basket update for FY 2021 of 2.2 percent, reduced by the statutorily required multifactor productivity adjustment of 0 percentage point along with the wage index budget neutrality adjustment to update the payment rates; finalizing a FY 2021 IPF wage index which is fully based upon the OMB CBSA designations from Bulletin 18–04 and which uses the FY 2021 pre-floor, pre-reclassified IPPS hospital wage index as its basis.

E. Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 8, we have prepared an accounting statement showing the classification of the expenditures associated with the updates to the IPF wage index and payment rates in this final rule. Table 8 provides our best estimates of the cost savings outlined in section VII.C.6 above, with high and low estimates generated at 25 percent above and below the primary estimate of $176.8 million as calculated in section VII.C.6. Table 8 also includes our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this final rule and based on the data for 1,550 IPFs in our database.

TABLE 8—Accounting Statement: Classification of Estimated Benefits, Savings, and Transfers
[$ millions]

Category	Primary estimate	Low estimate	High estimate	Units		
				Year dollars	Discount rate	Period covered
Annualized Monetized Costs (+) or Savings (-) ($million/ year) *	-176.8	-132.6	-221.0	2019	7%	2020–2030
	-176.8	-132.6	-221.0	2019	3%	2020–2030
Annualized Monetized Transfers from Federal Government to IPF Medicare Providers	95.0	-	-	2019	-	2020-2021

* We note that there is some ambiguity in attributing these savings across the several rulemakings—Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (CoPs), 83 FR 47686; the April 6, 2020, IFC, 85 FR 19230; and this final rule—that all address similar requirements.

F. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $8 million to $41.5 million or less in any 1 year. Individuals and states are not included in the definition of a small entity.

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities.

The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 7, we estimate that the overall revenue impact of this final rule on all IPFs is to increase estimated Medicare payments by approximately 2.3 percent. As a result, since the estimated impact of this final rule is a net increase in revenue across almost all categories of IPFs, the Secretary has determined that this final rule will have a positive revenue impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in section V.C.1 of this final rule, the rates and policies set forth in this final rule will not have an adverse impact on the rural hospitals based on the data of the 248 rural excluded psychiatric units and 61 rural psychiatric hospitals in our database of 1,550 IPFs for which data were available. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandate Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This final rule does not mandate any requirements for state, local, or tribal governments, or for the private sector. This final rule would not impose a mandate that will result in the expenditure by state, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $156 million in any one year.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a

proposed rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This final rule does not impose substantial direct costs on state or local governments or preempt state law.

I. Regulatory Reform Analysis Under Executive Order 13771

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' Though this final rule may contribute to the generation of $132.45 million in annualized cost savings (that is, $176.8 million as calculated in section VII.C.6 above, discounted at 7 percent relative to year 2016), this cost savings was accounted for in Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (CoPs) (83 FR 47686) and was associated with the special requirements for psychiatric hospitals in the April 6, 2020 IFC. As a result, it has been determined that this final rule is an action that primarily results in transfers and does not impose more than *de minimis* costs as described above and thus is not a regulatory or deregulatory action for the purposes of Executive Order 13771.

For the reasons set forth in the preamble, this rule is adopted as final and the amendment to § 482.61 (amendatory instruction number 48) in the interim final rule published on April 6, 2020 (85 FR 19292) is adopted as final without change.

Dated: July 23, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 29, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–16990 Filed 7–31–20; 4:15 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1733–F]

RIN 0938–AU09

Medicare Program; FY 2021 Hospice Wage Index and Payment Rate Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2021. This rule also revises the hospice wage index to reflect the current Office of Management and Budget area delineations, with a 5 percent cap on wage index decreases. In addition, this rule responds to comments on the modified election statement and the addendum examples that were posted on the Hospice Center web page to assist hospices in understanding the content requirements finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, effective for hospice elections beginning on and after October 1, 2020.

DATES: These regulations are effective on October 1, 2020.

FOR FURTHER INFORMATION CONTACT:

For general questions about hospice payment policy, send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Hospice Care

Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of a terminally ill individual and warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. Medicare regulations define ''palliative care'' as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (42 CFR 418.3). Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through a collaboration of professionals and other caregivers, with the goal of making the beneficiary as physically and emotionally comfortable as possible. Hospice is compassionate beneficiary and family/caregiver-centered care for those who are terminally ill.

As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is ''terminally ill,'' as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course. The regulations at § 418.22(b)(3) require that the certification and recertification forms include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less.

Under the Medicare hospice benefit, the election of hospice care is a patient choice and once a terminally ill patient elects to receive hospice care, a hospice interdisciplinary group is essential in the seamless provision of services. These hospice services are provided primarily in the individual's home. The hospice interdisciplinary group works with the beneficiary, family, and caregivers to develop a coordinated, comprehensive care plan; reduce unnecessary diagnostics or ineffective therapies; and maintain ongoing communication with individuals and their families about changes in their condition. The beneficiary's care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

If, in the judgment of the hospice interdisciplinary team, which includes the hospice physician, the patient's symptoms cannot be effectively managed at home, then the patient is eligible for general inpatient care (GIP), a more medically intense level of care. GIP must be provided in a Medicare-certified hospice freestanding facility, skilled nursing facility, or hospital. GIP is provided to ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return to his or her home and continue to receive routine home care. Limited, short-term, intermittent, inpatient respite care (IRC) is also available

because of the absence or need for relief of the family or other caregivers. Additionally, an individual can receive continuous home care (CHC) during a period of crisis in which an individual requires continuous care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. Continuous home care may be covered for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with our regulations at § 418.204. A minimum of 8 hours of nursing care, or nursing and aide care, must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

Hospices must comply with applicable civil rights laws,[1] including section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, under which covered entities must take appropriate steps to ensure effective communication with patients and patient care representatives with disabilities, including the provisions of auxiliary aids and services. Additionally, they must take reasonable steps to ensure meaningful access for individuals with limited English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at: *http://www.hhs.gov/ocr/civilrights.*

B. Services Covered by the Medicare Hospice Benefit

Coverage under the Medicare Hospice benefit requires that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare-certified hospice program. These covered services include: nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (here called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologicals); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility, or hospice inpatient facility (including both respite care and procedures necessary for pain control and acute or chronic symptom management); continuous home care during periods of crisis, and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, that hospice program; and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (described in section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act).

Upon the implementation of the hospice benefit, the Congress also expected hospices to continue to use volunteer services, though these services are not reimbursed by Medicare (see section 1861(dd)(2)(E) of the Act). As stated in the FY 1983 Hospice Wage Index and Rate Update proposed rule (48 FR 38149), the hospice interdisciplinary group should comprise paid hospice employees as well as hospice volunteers, and that ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices.'' This expectation supports the hospice philosophy of community-based, holistic, comprehensive, and compassionate end of life care.

C. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and our regulations in 42 CFR part 418, establish eligibility requirements, payment standards and procedures; define covered services; and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment in one of four prospectively-determined rate categories of hospice care (routine home care (RHC), CHC, IRC, and GIP), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is to include all of the hospice services and items needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act.

While payment is made to hospices is to cover all items, services, and drugs for the palliation and management of the terminal illness and related conditions, federal funds cannot be used for prohibited activities, even in the context of a per diem payment. Recent news reports [2] have brought to light the potential role hospices could play in medical aid in dying (MAID) where such practices have been legalized in certain states. We wish to remind hospices that The Assisted Suicide Funding Restriction Act of 1997 (ASFRA) (Pub. L. 105–12) prohibits the use of federal funds to provide or pay for any health care item or service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual including mercy killing, euthanasia, or assisted suicide. However, pursuant to section 3(b)(4) of ASFRA, the prohibition does not apply to the provision of an item or service for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as the item or service is not furnished for the specific purpose of causing or accelerating death.

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided changes in the methodology concerning updating the daily payment rates based on the hospital market basket percentage increase applied to the payment rates in effect during the previous federal FY.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established that updates to the hospice payment rates beginning FY 2002 and subsequent FYs be the hospital market basket percentage increase for the FY.

3. FY 1998 Hospice Wage Index Final Rule

The FY 1998 Hospice Wage Index final rule (62 FR 42860), implemented a new methodology for calculating the hospice wage index and instituted an annual Budget Neutrality Adjustment Factor (BNAF) so aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index.

[1] Hospices are also subject to additional Federal civil rights laws, including the Age Discrimination Act, Section 1557 of the Affordable Care Act, and conscience and religious freedom laws.

[2] Nelson, R., Should Medical Aid in Dying Be Part of Hospice Care? Medscape Nurses. February 26, 2020. *https://www.medscape.com/viewarticle/925769#vp_1.*

4. FY 2010 Hospice Wage Index Final Rule

The FY 2010 Hospice Wage Index and Rate Update final rule (74 FR 39384) instituted an incremental 7-year phase-out of the BNAF beginning in FY 2010 through FY 2016. The BNAF phase-out reduced the amount of the BNAF increase applied to the hospice wage index value, but was not a reduction in the hospice wage index value itself or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act is subject to annual reductions related to changes in economy-wide productivity, as specified in section 1814(i)(1)(C)(iv) of the Act.

In addition, sections 1814(i)(5)(A) through (C) of the Act, as added by section 3132(a) of the Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111–148), required hospices to begin submitting quality data, based on measures specified by the Secretary of the Department of Health and Human Services (the Secretary), for FY 2014 and subsequent FYs. Beginning in FY 2014, hospices that fail to report quality data have their market basket percentage increase reduced by 2 percentage points.

Section 1814(a)(7)(D)(i) of the Act, as added by section 3132(b)(2) of the PPACA, required, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary's hospice care prior to the 180th day recertification and each subsequent recertification, and to attest that such visit took place. When implementing this provision, we finalized in the FY 2011 Hospice Wage Index final rule (75 FR 70435) that the 180th day recertification and subsequent recertifications would correspond to the beneficiary's third or subsequent benefit periods. Further, section 1814(i)(6) of the Act, as added by section 3132(a)(1)(B) of the PPACA, authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the PPACA could capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determined to be appropriate. The data collected could be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, we were required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

In the FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314) we announced that beginning in 2012, the hospice aggregate cap would be calculated using the patient-by-patient proportional methodology, within certain limits. We allowed existing hospices the option of having their cap calculated through the original streamlined methodology, also within certain limits. As of FY 2012, new hospices have their cap determinations calculated using the patient-by-patient proportional methodology. If a hospice's total Medicare payments for the cap year exceed the hospice aggregate cap, then the hospice must repay the excess back to Medicare.

7. IMPACT Act of 2014

The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) (Pub. L. 113–185) became law on October 6, 2014. Section 3(a) of the IMPACT Act mandated that all Medicare certified hospices be surveyed every 3 years beginning April 6, 2015 and ending September 30, 2025. In addition, section 3(c) of the IMPACT Act requires medical review of hospice cases involving beneficiaries receiving more than 180 days of care in select hospices that show a preponderance of such patients; section 3(d) of the IMPACT Act contains a new provision mandating that the cap amount for accounting years that end after September 30, 2016, and before October 1, 2025 be updated by the hospice payment update rather than using the consumer price index for urban consumers (CPI–U) for medical care expenditures.

8. FY 2015 Hospice Wage Index and Payment Rate Update Final Rule

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50452) finalized a requirement that the Notice of Election (NOE) be filed within 5 calendar days after the effective date of hospice election. If the NOE is filed beyond this 5-day period, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50474). Similar to the NOE, the claims processing system must be notified of a beneficiary's discharge from hospice or hospice benefit revocation within 5 calendar days after the effective date of the discharge/revocation (unless the hospice has already filed a final claim) through the submission of a final claim or a Notice of Termination or Revocation (NOTR).

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50479) also finalized a requirement that the election form include the beneficiary's choice of attending physician and that the beneficiary provide the hospice with a signed document when he or she chooses to change attending physicians.

In addition, the FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50496) provided background, eligibility criteria, survey respondents, and implementation of the Hospice Experience of Care Survey for informal caregivers. Hospice providers were required to begin using this survey for hospice patients as of 2015.

Finally, the FY 2015 Hospice Wage Index and Rate Update final rule required providers to complete their aggregate cap determination not sooner than 3 months after the end of the cap year, and not later than 5 months after, and remit any overpayments. Those hospices that fail to submit their aggregate cap determinations on a timely basis will have their payments suspended until the determination is completed and received by the Medicare contractor (79 FR 50503).

9. FY 2016 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47172), we created two different payment rates for RHC that resulted in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for subsequent days of hospice care. We also created a service intensity add-on payment payable for services during the last 7 days of the beneficiary's life, equal to the CHC hourly payment rate multiplied by the amount of direct patient care provided by a registered nurse (RN) or social worker that occurs during the last 7 days (80 FR 47177).

In addition to the hospice payment reform changes discussed, the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47185) implemented changes mandated by the IMPACT Act, in which the cap amount for accounting years that end after September 30, 2016

and before October 1, 2025 would be updated by the hospice payment update percentage rather than using the CPI–U. This was applied to the 2016 cap year, starting on November 1, 2015 and ending on October 31, 2016. In addition, we finalized a provision to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the fiscal year for FY 2017 and thereafter. Finally, the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47144) clarified that hospices would have to report all diagnoses of the beneficiary on the hospice claim as a part of the ongoing data collection efforts for possible future hospice payment refinements.

10. FY 2017 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52160), we finalized several new policies and requirements related to the Hospice Quality Reporting Program (HQRP). First, we codified our policy that if the National Quality Forum (NQF) made non-substantive changes to specifications for HQRP measures as part of the NQF's re-endorsement process, we would continue to utilize the measure in its new endorsed status, without going through new notice-and-comment rulemaking. We would continue to use rulemaking to adopt substantive updates made by the NQF to the endorsed measures we have adopted for the HQRP; determinations about what constitutes a substantive versus non-substantive change would be made on a measure-by-measure basis. Second, we finalized two new quality measures for the HQRP for the FY 2019 payment determination and subsequent years: Hospice Visits when Death is Imminent Measure Pair and Hospice and Palliative Care Composite Process Measure-Comprehensive Assessment at Admission (81 FR 52173). The data collection mechanism for both of these measures is the HIS, and the measures were effective April 1, 2017. Regarding the CAHPS® Hospice Survey, we finalized a policy that hospices that receive their CMS Certification Number (CCN) after January 1, 2017 for the FY 2019 Annual Payment Update (APU) and January 1, 2018 for the FY 2020 APU will be exempted from the Hospice Consumer Assessment of Healthcare Providers and Systems (CAHPS®) requirements due to newness (81 FR 52182). The exemption is determined by CMS and is for 1 year only.

11. FY 2020 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38487), we rebased the payment rates for CHC and GIP and set those rates equal to their average estimated FY 2019 costs per day. We also rebased IRC per diem rates equal to the estimated FY 2019 average costs per day, with a reduction of 5 percent to the FY 2019 average cost per day to account for coinsurance. We finalized the FY 2020 proposal to reduce the RHC payment rates by 2.72 percent to offset the increases to CHC, IRC, and GIP payment rates to implement this policy in a budget-neutral manner in accordance with section 1814(i)(6) of the Act (84 FR 38496). We also finalized a policy to use the current year's pre-floor, pre-reclassified hospital inpatient wage index as the wage adjustment to the labor portion of the hospice rates. Finally, in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38505) we finalized modifications to the hospice election statement content requirements at § 418.24(b) by requiring hospices, upon request, to furnish an election statement addendum effective beginning in FY 2021. The addendum must list those items, services, and drugs the hospice has determined to be unrelated to the terminal illness and related conditions, increasing coverage transparency for beneficiaries under a hospice election.

II. Provisions of the Final Rule

A. Hospice Wage Index Changes

1. Implementation of New Labor Market Delineations

In general, the Office of Management and Budget (OMB) issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On April 10, 2018, OMB issued OMB Bulletin No. 18–03 which superseded the August 15, 2017 OMB Bulletin No. 17–01. On September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins made revisions to the delineations of Metropolitan Statistical Areas (MSAs), Micropolitan Statistical Areas, and Combined Statistical Areas, and guidance on uses of the delineation in these areas. A copy of the September 14, 2018 bulletin is available online at: *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*. This bulletin states it ''provides the delineations of all MSAs, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252), and Census Bureau data.'' On March 6, 2020 OMB issued Bulletin No. 20–01 (available at: *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*), and, as discussed below, was not issued in time for development of the FY 2021 Hospice Wage Index and Rate Update proposed rule.

While the revisions OMB published on September 14, 2018, are not as sweeping as the changes made when we adopted the Core-Based Statistical Area (CBSA) geographic designations for FY 2006, the September 14, 2018 bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. We believe it is important for the hospice wage index to use the latest OMB delineations available in order to maintain an accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. Using the most current OMB delineations creates a more accurate representation of geographic variation in wage levels. In the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule (85 FR 20953), we proposed to implement the new OMB delineations as described in the September 14, 2018 OMB Bulletin No. 18–04 for the hospice wage index effective beginning in FY 2021. As noted above, the March 6, 2020 OMB Bulletin No. 20–01 was not issued in time for development of the proposed rule. As we stated in the proposed rule, we do not believe that the minor updates included in OMB Bulletin No. 20–01 would impact our proposed updates to the CBSA-based labor market area delineations. However, if needed, we would include any updates from this bulletin in future rulemaking.

i. Micropolitan Statistical Areas

As discussed in the FY 2006 Hospice Wage Index and Payment Rate Update proposed rule (70 FR 22397) and final rule (70 FR 45132), CMS considered how to use the Micropolitan Statistical Area definitions in the calculation of the wage index. OMB defines a ''Micropolitan Statistical Area'' as a ''CBSA'' associated with at least one

urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), CMS determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each state's Hospice rural wage index (70 FR 22397 and 70 FR 45132). Thus, the hospice statewide rural wage index is determined using IPPS hospital data from hospitals located in non-MSAs.

Based upon the 2010 Decennial Census data, a number of urban counties have switched status and have joined or became Micropolitan Areas, and some counties that once were part of a Micropolitan Area, have become urban. Overall, there are fewer Micropolitan Areas (542) under the new OMB delineations based on the 2010 Census than existed under the latest data from the 2000 Census (581). We believe that the best course of action would be to continue the policy established in the FY 2006 Hospice Wage Index and Payment Rate Update final rule and include Micropolitan Areas in each state's rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). Therefore, in conjunction with our proposal to implement the new OMB labor market delineations beginning in FY 2021 and consistent with the treatment of Micropolitan Areas under the IPPS, we proposed to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of each state's rural wage index.

ii. Urban Counties Becoming Rural

Under the new OMB delineations (based upon the 2010 decennial Census data), a total of 34 counties (and county equivalents) that are currently considered urban would be considered rural beginning in FY 2021. Table 1 lists the 34 counties that would change to rural status with the implementation of the new OMB delineations.

TABLE 1: Counties that Would Change to Rural Status

County Name	State	CBSA	CBSA Name
BAKER	GA	10500	Albany, GA
NEWTON	TX	13140	Beaumont-Port Arthur, TX
GOLDEN VALLEY	MT	13740	Billings, MT
WALKER	AL	13820	Birmingham-Hoover, AL
SIOUX	ND	13900	Bismarck, ND
FLOYD	VA	13980	Blacksburg-Christiansburg-Radford, VA
DE WITT	IL	14010	Bloomington, IL
FORD	IL	16580	Champaign-Urbana, IL
BUCKINGHAM	VA	16820	Charlottesville, VA
ARANSAS	TX	18580	Corpus Christi, TX
MC DONALD	MO	22220	Fayetteville-Springdale-Rogers, AR-MO
LE FLORE	OK	22900	Fort Smith, AR-OK
WELLS	IN	23060	Fort Wayne, IN
HOOD	TX	23104	Fort Worth-Arlington, TX
SOMERVELL	TX	23104	Fort Worth-Arlington, TX
HAMILTON	NE	24260	Grand Island, NE
BARRY	MI	24340	Grand Rapids-Wyoming, MI
KALAWAO	HI	27980	Kahului-Wailuku-Lahaina, HI
VAN BUREN	MI	28020	Kalamazoo-Portage, MI
SCOTT	IN	31140	Louisville/Jefferson County, KY-IN
TRIMBLE	KY	31140	Louisville/Jefferson County, KY-IN
BENTON	MS	32820	Memphis, TN-MS-AR
SIBLEY	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI
HICKMAN	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
GULF	FL	37460	Panama City, FL
CUSTER	SD	39660	Rapid City, SD
CAROLINE	VA	40060	Richmond, VA
WEBSTER	LA	43340	Shreveport-Bossier City, LA
PLYMOUTH	IA	43580	Sioux City, IA-NE-SD
UNION	SC	43900	Spartanburg, SC
PEND OREILLE	WA	44060	Spokane-Spokane Valley, WA
COLUMBIA	WA	47460	Walla Walla, WA
PULASKI	GA	47580	Warner Robins, GA
KINGMAN	KS	48620	Wichita, KS

iii. Rural Counties Becoming Urban

Under the new OMB delineations (based upon the 2010 decennial Census data), a total of 47 counties (and county equivalents) that are currently designated rural would be considered urban beginning in FY 2021. Table 2 lists the 47 counties that would change to urban status.

TABLE 2: Counties that Would Change to Urban Status

County Name	State	CBSA	CBSA Name
GREENE	AL	46220	Tuscaloosa, AL
WASHINGTON	AL	33660	Mobile, AL
FRANKLIN	AR	22900	Fort Smith, AR-OK
LEVY	FL	23540	Gainesville, FL
STEWART	GA	17980	Columbus, GA-AL
TALBOT	GA	17980	Columbus, GA-AL
POWER	ID	38540	Pocatello, ID
FULTON	IL	37900	Peoria, IL
JOHNSON	IL	16060	Carbondale-Marion, IL
FRANKLIN	IN	17140	Cincinnati, OH-KY-IN
PARKE	IN	45460	Terre Haute, IN
WARREN	IN	29200	Lafayette-West Lafayette, IN
BOONE	IA	11180	Ames, IA
JASPER	IA	19780	Des Moines-West Des Moines, IA
GEARY	KS	31740	Manhattan, KS
CARTER	KY	26580	Huntington-Ashland, WV-KY-OH

ASSUMPTION	LA	12940	Baton Rouge, LA
MOREHOUSE	LA	33740	Monroe, LA
FRANKLIN	MA	44140	Springfield, MA
IONIA	MI	24340	Grand Rapids-Kentwood, MI
SHIAWASSEE	MI	29620	Lansing-East Lansing, MI
LAKE	MN	20260	Duluth, MN-WI
COVINGTON	MS	25620	Hattiesburg, MS
HOLMES	MS	27140	Jackson, MS
STONE	MS	25060	Gulfport-Biloxi, MS
COOPER	MO	17860	Columbia, MO
HOWARD	MO	17860	Columbia, MO
STILLWATER	MT	13740	Billings, MT
ANSON	NC	16740	Charlotte-Concord-Gastonia, NC-SC
CAMDEN	NC	47260	Virginia Beach-Norfolk-Newport News, VA-NC
GRANVILLE	NC	20500	Durham-Chapel Hill, NC
HARNETT	NC	22180	Fayetteville, NC
OTTAWA	OH	45780	Toledo, OH
CLARENDON	SC	44940	Sumter, SC
GIBSON	TN	27180	Jackson, TN
STEWART	TN	17300	Clarksville, TN-KY
HARRISON	TX	30980	Longview, TX
STERLING	TX	41660	San Angelo, TX
KING AND QUEEN	VA	40060	Richmond, VA
MADISON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
JACKSON	WV	16620	Charleston, WV
MORGAN	WV	25180	Hagerstown-Martinsburg, MD-WV
LINCOLN	WI	48140	Wausau-Weston, WI
ADJUNTAS	PR	38660	Ponce, PR
LAS MARIAS	PR	32420	Mayagüez, PR

iv. Urban Counties Moving to a Different Urban CBSA

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to another urban CBSA under the new OMB delineations. In other cases, applying the new OMB delineations would involve a change only in CBSA name or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19380 (Dayton, OH) would experience both a change to its number and its name, and become CBSA 19430 (Dayton-Kettering, OH), while all of its three constituent counties would remain the same. In other cases, only the name of the CBSA would be modified, and none of the currently assigned counties would be reassigned to a different urban CBSA. Table 3 lists CBSAs that would change the name and/or CBSA number only.

TABLE 3: Counties that Would Change Name and/or CBSA Number

Proposed CBSA Code	Proposed CBSA Title	Current CBSA Code	Current CBSA Title
10540	Albany-Lebanon, OR	10540	Albany, OR
11500	Anniston-Oxford, AL	11500	Anniston-Oxford-Jacksonville, AL
12060	Atlanta-Sandy Springs-Alpharetta, GA	12060	Atlanta-Sandy Springs-Roswell, GA
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock, TX
13460	Bend, OR	13460	Bend-Redmond, OR
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
14740	Bremerton-Silverdale-Port Orchard, WA	14740	Bremerton-Silverdale, WA
15380	Buffalo-Cheektowaga, NY	15380	Buffalo-Cheektowaga-Niagara Falls, NY
19430	Dayton-Kettering, OH	19380	Dayton, OH
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Mauldin, SC
25060	Gulfport-Biloxi, MS	25060	Gulfport-Biloxi-Pascagoula, MS
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Beaufort, SC
28700	Kingsport-Bristol, TN-VA	28700	Kingsport-Bristol-Bristol, TN-VA
31860	Mankato, MN	31860	Mankato-North Mankato, MN
33340	Milwaukee-Waukesha, WI	33340	Milwaukee-Waukesha-West Allis, WI
34940	Naples-Marco Island, FL	34940	Naples-Immokalee-Marco Island, FL
35660	Niles, MI	35660	Niles-Benton Harbor, MI
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Hayward-Berkeley, CA
36500	Olympia-Lacey-Tumwater, WA	36500	Olympia-Tumwater, WA
38060	Phoenix-Mesa-Chandler, AZ	38060	Phoenix-Mesa-Scottsdale, AZ
39150	Prescott Valley-Prescott, AZ	39140	Prescott, AZ
23224	Frederick-Gaithersburg-Rockville, MD	43524	Silver Spring-Frederick-Rockville, MD
44420	Staunton, VA	44420	Staunton-Waynesboro, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45940	Trenton-Princeton, NJ	45940	Trenton, NJ
46700	Vallejo, CA	46700	Vallejo-Fairfield, CA
47300	Visalia, CA	47300	Visalia-Porterville, CA
48140	Wausau-Weston, WI	48140	Wausau, WI
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL

Upon adoption of the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. In another type of change, some CBSAs have counties that would split

off to become part of or to form entirely new labor market areas. Finally, in some cases, a CBSA would lose counties to another existing CBSA. Table 4 lists the urban counties that would move from one urban CBSA to a newly or modified CBSA under the new OMB delineations.

TABLE 4: Counties that Would Change to a Different CBSA

Previous CBSA	New CBSA	County	State
16974	16984	COOK	IL
16974	16984	DU PAGE	IL
16974	16984	GRUNDY	IL
16974	20994	KENDALL	IL
16974	16984	MC HENRY	IL
16974	16984	WILL	IL
20524	39100	DUTCHESS	NY
20524	35614	PUTNAM	NY
26580	16620	LINCOLN	WV
28940	34100	GRAINGER	TN
35084	35154	SOMERSET	NJ
35614	35154	MIDDLESEX	NJ
35614	35154	MONMOUTH	NJ
35614	35154	OCEAN	NJ
35614	39100	ORANGE	NY
38660	49500	GUANICA	PR
38660	49500	GUAYANILLA	PR
38660	49500	PENUELAS	PR
38660	49500	YAUCO	PR

2. Transition Period

As discussed previously, overall, we believe that our proposal to adopt the revised OMB delineations for FY 2021 would result in hospice wage index values being more representative of the actual costs of labor in a given area. However, we also recognize that some hospices would experience decreases in their area wage index values as a result of our proposal. We also realize that many hospices would have higher area wage index values under our proposal.

To mitigate the potential impacts of adopting new OMB delineations on hospices, we have in the past provided for transition periods when adopting changes that have significant payment implications, particularly large negative impacts. For example, we have proposed and finalized budget-neutral transition policies to help mitigate negative impacts on hospices following the adoption of the new CBSA delineations based on the 2010 decennial census data in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47142). Specifically, we applied a blended wage index for 1 year (FY 2016) for all geographic areas that would consist of a 50/50 blend of the wage index values using OMB's old area delineations and the wage index values using OMB's new area delineations. That is, for each county, a blended wage index was calculated equal to 50 percent of the FY 2016 wage index using the old labor market area delineation and 50 percent of the FY 2016 wage index using the new labor market area delineation, which resulted in an average of the two values. While we believed that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels, we also recognized that adopting such changes may cause some short-term instability in hospice payments, in particular for hospices that would be negatively impacted by the proposed adoption of the updates to the OMB delineations. Therefore, we also proposed a transition policy to help mitigate any significant negative impacts that hospices may experience due to our proposal to adopt the revised OMB delineations. For FY 2021 as a transition, we proposed to apply a 5 percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior FY. This transition would allow the effects of our proposed adoption of the revised CBSA delineations to be phased in over 2 years, where the estimated reduction in a geographic area's wage index would be capped at 5 percent in FY 2021 (that is, no cap would be applied to the reduction in the wage index for the second year (FY 2022)). We believe a 5 percent cap on the overall decrease in a geographic area's wage index value would be appropriate for FY 2021, as it provides predictability in payment levels from FY 2020 to the upcoming FY 2021 and additional transparency because it is administratively simpler than our prior 1-year 50/50 blended wage index approach. We believe 5 percent is a reasonable level for the cap because it would effectively mitigate any significant decreases in a geographic area's wage index value for FY 2021.

Because we believe that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels we proposed to include a cap on the overall decrease in a geographic area's wage index value.

Overall, the impact between the FY 2021 wage index using the old OMB delineations and the proposed FY 2021 wage index using the new OMB delineations would be 0.0 percent due to the wage index standardization factor, which ensures that wage index updates and revisions are implemented in a budget-neutral manner. We solicited comments on this proposed transition methodology.

We received approximately 12 comments on the FY 2021 hospice wage index proposals from various stakeholders including hospices, national industry associations and MedPAC. A summary of these comments and our responses to those comments appear below:

Comment: Nearly all commenters stated that they support the adoption of the revised OMB delineations from the September 14, 2018 Bulletin No. 18–04 and the proposed transition methodology that would apply a 5 percent cap on decreases to a geographic area's wage index value relative to the wage index value from the prior fiscal year.

Response: We appreciate the commenters' support of the adoption of the new OMB delineations and a 5 percent cap on wage index decreases for FY 2021 as an appropriate transition policy.

Comment: A few commenters stated that the adoption of the New Brunswick-Lakewood, NJ CBSA would result in a reduction in reimbursement for the four New Jersey counties that would make up the new CBSA. One commenter recommended that CMS delay finalizing the proposal to implement the new OMB delineations. While another commenter suggested that the transition policy is critical to offset economic losses for hospices like those in the impacted New Jersey counties throughout the country.

Response: We appreciate the concerns sent in by the commenters regarding the impact of implementing the New Brunswick-Lakewood, NJ CBSA designation on their specific counties. While, we understand the commenters' concern regarding the potential financial impact, we believe that implementing the revised OMB delineations will create more accurate representations of labor market areas nationally and result in hospice wage index values being more representative of the actual costs of labor in a given area. Although this comment only addressed the negative impact on the commenter's geographic area, we believe it is important to note that there are many geographic locations and hospice providers that will experience positive impacts upon implementation of the revised CBSA designations. We believe that the OMB delineations for Metropolitan and Micropolitan Statistical Areas are appropriate for use in accounting for wage area differences and that the values computed under the revised delineations will result in more appropriate payments to providers by more accurately accounting for and reflecting the differences in area wage levels.

We recognize that there are areas which will experience a decrease in their wage index. As such, it is our longstanding policy to provide temporary adjustments to mitigate negative impacts from the adoption of new policies or procedures. In the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule, we proposed a transition in order to mitigate the resulting short-term instability and negative impacts on certain providers and to provide time for providers to adjust to their new labor market delineations. We continue to believe that the 1-year 5 percent cap transitional policy provides an adequate safeguard against any significant payment reductions, allows for sufficient time to make operational changes for future fiscal years, and provides a reasonable balance between mitigating some short-term instability in hospice payments and improving the accuracy of the payment adjustment for differences in area wage levels. Therefore, we believe that it is appropriate to implement the new OMB delineations without delay.

Comment: A few commenters including MedPAC suggested alternatives to the 5 percent cap transition policy. MedPAC suggested that the 5 percent cap limit should apply to both increases and decreases in the wage index so that no provider would have its wage index value increase or decrease by more than 5 percent for FY 2021. One commenter suggested that wage index decreases should be capped at 3 percent instead of 5 percent. Finally, several commenters recommended that CMS consider implementing a 5 percent cap, similar to that which we proposed for FY 2021, for years beyond the implementation of the revised OMB delineations.

Response: We appreciate MedPAC's suggestion that the cap on wage index movements of more than 5 percent should also be applied to increases in the wage index. However, as we discussed in the proposed rule, the purpose of the proposed transition policy is to help mitigate the significant negative impacts of certain wage index changes. Additionally, we believe that the 5 percent cap on wage index decreases is an adequate safeguard against any significant payment reductions and do not believe that capping wage index decreases at 3 percent instead of 5 percent is appropriate. We believe that 5 percent is a reasonable level for the cap rather than 3 percent because it would more effectively mitigate any significant decreases in a hospice's wage index for FY 2021, while still balancing the importance of ensuring that area wage index values accurately reflect relative differences in area wage levels. Furthermore, a 5 percent cap on wage index decreases in FY 2021 provides a degree of predictability in payment changes for providers and allows providers time to adjust to any significant decreases they may face in FY 2022, after the transition period has ended. Finally, with regards to the comments recommending that CMS consider implementing this type of transition in future years, we believe that this would be counter to the purpose of the wage index, which is used to adjust payments to account for local differences in area wage levels. While we believe that a transition is necessary to help mitigate the negative impact from the revised OMB delineations in the first year of implementation, this transition must be balanced against the importance of ensuring accurate payments.

Final Decision: We are finalizing our proposal to adopt the revised OMB delineations from the September 14, 2018 OMB Bulletin 18–04 and apply a 1-year 5 percent cap on wage index decreases as proposed, meaning the counties impacted will receive a 5 percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior fiscal year for FY 2021 effective October 1, 2020.

The final wage index applicable to FY 2021 can be found on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice.* The final hospice wage index for FY 2021 is effective October 1, 2020 through September 30, 2021.

The wage index file also provides a crosswalk between the FY 2021 wage index using the current OMB delineations and the FY 2021 wage index using the revised OMB

delineations that will be in effect in FY 2021. This file shows each state and county and its corresponding wage index along with the previous CBSA number, the new CBSA number or alternate identification number, and the new CBSA name.

B. FY 2021 Hospice Wage Index and Rate Update

1. FY 2021 Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by OMB to the MSAs.

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), we finalized the proposal to use the current FY's hospital wage index data to calculate the hospice wage index values. In the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule (85 FR 20957) we discussed our proposal to use the FY 2021 pre-floor, pre-reclassified hospital wage index data to calculate the hospice wage index values with a 5 percent cap on wage index decreases. This means that the hospital wage data used for the hospice wage index would reflect the new OMB delineations but would not take into account any geographic reclassification of hospitals including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The appropriate wage index value is applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or IRC.

In the FY 2006 Hospice Wage Index and Payment Rate Update final rule (70 FR 45135), we adopted the policy that, for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. For FY 2021, the only CBSA without a hospital from which hospital wage data can be derived is 25980, Hinesville-Fort Stewart, Georgia. The FY 2021 adjusted wage index value for Hinesville-Fort Stewart, Georgia is 0.8527.

There exist some geographic areas where there were no hospitals, and thus, no hospital wage data on which to base the calculation of the hospice wage index. In the FY 2008 Hospice Wage Index and Payment Rate Update final rule (72 FR 50217 through 50218), we implemented a methodology to update the hospice wage index for rural areas without hospital wage data. In cases where there was a rural area without rural hospital wage data, we use the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs, to represent a reasonable proxy for the rural area. The term ''contiguous'' means sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For FY 2021, we will continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047, subsequently adjusted by the hospice floor.

As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. As discussed above the pre-floor, pre-reclassified hospital wage index values below 0.8 will be adjusted by a 15 percent increase subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8, then County A's hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15 which equals 0.8556. Because 0.8556 is greater than 0.8, County B's hospice wage index would be 0.8.

The final hospice wage index applicable for FY 2021 (October 1, 2020 through September 30, 2021) is available on our website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index* .

A summary of the general comments on the hospice wage index and our responses to those comments appear below:

Comment: One commenter expressed concern that hospices in Montgomery County, Maryland are at a long-term competitive disadvantage due to a Medicare hospice federal payment inequity involving CBSAs. This commenter suggested that since CMS began using CBSAs to determine payment, hospices in Montgomery County have received lower payments than hospices in adjacent counties due to Montgomery County being carved out of Washington DC. The commenter recommended two options to resolve this issue: allow hospices serving patients in MSAs that are large enough to be subdivided into metropolitan divisions to opt for the higher wage index valuation within the MSA's respective CBSAs or assigning the highest wage index valuation from among the MSA's metropolitan divisions for the purpose of hospice Medicare reimbursement.

Response: We thank the commenter for the recommendation. However, we continue to believe that the OMB's geographic area delineations represent a useful proxy for differentiating between labor markets and that the geographic area delineations are appropriate for use in determining Medicare hospice payments. The general concept of the CBSAs is that of an area containing a recognized population nucleus and adjacent communities that have a high degree of integration with that nucleus. The purpose of the standards is to provide nationally consistent definitions for collecting, tabulating, and publishing federal statistics for a set of geographic areas. CBSAs include adjacent counties that have a minimum of 25 percent commuting to the central counties of the area. This is an increase over the minimum commuting threshold for outlying counties applied in the previous definition of MSAs of 15 percent. Based on the OMB's current delineations, Montgomery County belongs in a separate CBSA from the areas defined in the Washington-Arlington-Alexandria, DCVA CBSA. Unlike inpatient prospective payment system (IPPS) hospitals, inpatient rehabilitation facilities (IRFs), and

skilled nursing facilities (SNFs), where each provider uses a single CBSA, hospice agencies may be reimbursed based on more than one wage index. Payments are based upon the location of the beneficiary for routine and continuous home care or the location of the facility for respite and general inpatient care. Hospices in Montgomery County, Maryland may provide RHC and CHC to patients in the ''Washington Arlington-Alexandria, DC–VA'' CBSA and to patients in the ''Baltimore-Columbia-Towson, Maryland'' CBSA. We have used CBSAs for determining hospice payments since FY 2006. Additionally, other provider types, such as IPPS hospitals, home health agencies (HHAs), SNFs, IRFs, and the dialysis facilities all used CBSAs to define their labor market areas. We believe that using the most current OMB delineations provides a more accurate representation of geographic variation in wage levels and do not believe it would be appropriate to allow hospices to opt for or be assigned a higher CBSA designation.

Comment: Many commenters recommended more far-reaching revisions and reforms to the wage index methodology used under Medicare fee-for-service. MedPAC recommended that Congress repeal the existing hospital wage index and instead implement a market-level wage index for use across other prospective payment systems that would use wage data from all employers and industry-specific occupational weights, and adjust for geographic differences in the ratio of benefits to wages. Additionally, many commenters recommended that CMS develop and implement a wage index model that is consistent across all provider types, incorporates some means by which providers are protected against substantial payment reductions due to dramatic reductions in wage index values from one year to the next, allows hospices and other post-acute providers to utilize a reclassification board and guarantees that wage index values do not drop below the rural wage index value applicable in the state of operation. Finally, one commenter recommended that CMS implement a policy similar to that of the FY 2020 IPPS final rule which increased the wage index for hospitals with a wage index value below the 25th percentile in order to address the discrepancies between counties whose wage index falls below the statewide rural wage index.

Response: We appreciate the commenters' recommendations; however, these comments are outside the scope of the proposed rule. Any changes to the way we adjust hospice payments to account for geographic wage differences, beyond the wage index proposals discussed in the FY 2021 Hospice Wage Index and Rate Update proposed rule, would have to go through notice and comment rulemaking. While CMS and other stakeholders have explored potential alternatives to the current CBSA-based labor market system, no consensus has been achieved regarding how best to implement a replacement system. We believe that in the absence of hospice specific wage data, using the pre-floor, pre-reclassified hospital wage data is appropriate and reasonable for hospice payments.

Additionally, the regulations that govern hospice reimbursement do not provide a mechanism for allowing hospices to seek geographic reclassification or to utilize the rural floor provisions that exist for IPPS hospitals. The reclassification provision found in section 1886(d)(10) of the Act is specific to hospitals. Section 4410(a) of the Balanced Budget Act of 1997 (Pub. L. 105–33) provides that the area wage index applicable to any hospital that is located in an urban area of a state may not be less than the area wage index applicable to hospitals located in rural areas in that state. This rural floor provision is also specific to hospitals. Because the reclassification provision and the hospital rural floor applies only to hospitals, and not to hospices, we continue to believe the use of the pre-floor and pre-reclassified hospital wage index results in the most appropriate adjustment to the labor portion of the hospice payment rates. This position is longstanding and consistent with other Medicare payment systems (for example, SNF PPS, IRF PPS, and HH PPS). However, the hospice wage index does include the hospice floor which is applicable to all CBSAs, both rural and urban. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by a 15 percent increase subject to a maximum wage index value of 0.8. Finally, with regards to the wage index changes detailed in the FY 2020 IPPS final rule, we would like to note that the hospice wage index is derived from hospital wage data. As such, any changes in the wage data of hospitals extend to the hospice setting, as hospital data is used to establish the wage index for hospices.

Final Decision: After considering the comments received in response to the proposed rule and for the reasons discussed previously, we are finalizing our proposal to use the FY 2021 pre-floor, pre-reclassified hospital wage index data as the basis for the FY 2021 hospice wage index. The wage index applicable for FY 2021 is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index.* The hospice wage index for FY 2021 is effective October 1, 2020 through September 30, 2021.

2. FY 2021 Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket percentage increase set out under section 1886(b)(3)(B)(iii) of the Act, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient market basket percentage increase for that FY.

In the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule (85 FR 20958), we proposed the market basket percentage increase of 3.0 percent for FY 2021 using the most current estimate of the inpatient hospital market basket (based on IHS Global Inc.'s fourth-quarter 2019 forecast with historical data through the third quarter 2019). We also stated if more recent data became available after the publication of the proposed rule and before the publication of the final rule (for example, more recent estimates of the inpatient hospital market basket update and/or multifactor productivity (MFP) adjustment), we would use such data to determine the hospice payment update percentage for FY 2021 in the final rule. For this final rule, based on IHS Global Inc.'s (IGIs) second-quarter 2020 forecast with historical data through the first quarter 2020 of the inpatient hospital market basket update, the market basket percentage increase for FY 2021 is 2.4 percent. We note that the fourth quarter 2019 forecast used for the proposed market basket update was developed prior to the economic impacts of the COVID–19 pandemic. This lower update (2.4 percent) for FY 2021, relative to the proposed rule (3.0 percent), is primarily driven by slower anticipated compensation growth for both health-related and other occupations as labor markets are expected to be significantly impacted during the recession that started in February 2020 and throughout the anticipated recovery.

Section 1814(i)(1)(C)(iv)(I), as added by section 3401(g) of the Act, requires, starting with FY 2013 (and in subsequent FYs), that the market basket percentage increase be annually reduced by changes in economy-wide productivity specified in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business MFP.

In the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule (85 FR 20958), we proposed a MFP adjustment of 0.4 percentage point based on IGIs fourth quarter 2019 forecast. Based on the more recent data available for this final rule, the current estimate of the MFP adjustment for FY 2021 is projected to be –0.1 percentage point. This MFP adjustment is based on the most recent macroeconomic outlook from IGI at the time of rulemaking (released June 2020) in order to reflect more current historical economic data. IGI produces monthly macroeconomic forecasts, which include projections of all of the economic series used to derive MFP. In contrast, IGI only produces forecasts of the more detailed price proxies used in the inpatient hospital market basket on a quarterly basis. Therefore, IGI's second quarter 2020 forecast is the most recent forecast of the inpatient hospital market basket update.

We note that it has typically been our practice to base the projection of the market basket price proxies and MFP in the final rule on the second quarter IGI forecast. For the FY 2021 Hospice Wage Index and Payment Rate Update final rule, we are using the IGI June macroeconomic forecast for MFP because it is a more recent forecast, and it is important to use more recent data during this period when economic trends, particularly employment and labor productivity, are notably uncertain because of the COVID–19 pandemic. Historically, the MFP adjustment based on the second quarter IGI forecast has been very similar to the MFP adjustment derived with IGI's June macroeconomic forecast. Substantial changes in the macroeconomic indicators in between monthly forecasts are atypical.

Given the unprecedented economic uncertainty as a result of the COVID–19 pandemic, the changes in the IGI macroeconomic series used to derive MFP between the second quarter 2020 IGI forecast and the IGI June 2020 macroeconomic forecast is significant. Therefore, we believe it is technically appropriate to use IGI's more recent June 2020 macroeconomic forecast to determine the MFP adjustment for the final rule as it reflects more current historical data. For comparison purposes, the 10-year moving average growth of MFP for FY 2021 is projected to be –0.1 percentage point based on IGI's June 2020 macroeconomic forecast compared to a FY 2021 projected 10-year moving average growth of MFP of 0.7 percentage point based on IGI's second quarter 2020 forecast. Mechanically subtracting the negative 10-year moving average growth of MFP from the market basket percentage increase using the data from the IGI June, 2020 macroeconomic forecast of the FY 2021 MFP adjustment would have resulted in a 0.1 percentage point increase in the FY 2021 hospice payment update percentage. However, under sections 1886(b)(3)(B)(xi)(I) and 1814(i)(1)(C)(v) of the Act, the Secretary is required to reduce (not increase) the hospice market basket percentage increase by changes in economy-wide productivity. Accordingly, we will be applying a 0.0 percentage point MFP adjustment to the market basket percentage increase. Therefore, the hospice payment update percentage for FY 2021 is 2.4 percent.

The labor portion of the hospice payment rates are as follows: For RHC, 68.71 percent; for CHC, 68.71 percent; for GIP, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, the non-labor portion of the payment rates are as follows: For RHC, 31.29 percent; for CHC, 31.29 percent; for GIP, 35.99 percent; and for Respite Care, 45.87 percent.

A summary of the comments we received regarding the payment update percentage and our responses to those comments appear below:

Comment: Nearly all commenters noted their support of the proposed hospice payment update percentage.

Response: We appreciate the comments in support of the hospice payment update percentage.

Comment: MedPAC recognizes that CMS is required by statute to update the hospice payments rates for FY 2021 (an increase of 2.4 percent as outlined in this final rule), however, they noted that in their March 2020 report to Congress, they recommended that Congress eliminate the payment update for FY 2021 (that is, hold the payment rates for FY 2021 at the FY 2020 levels).

Response: We appreciate the comment, however, we do not have the statutory authority to eliminate the annual payment updates to the hospice payment rates for FY 2021.

Final Decision: We are finalizing the 2.4 percent hospice payment update percentage for FY 2021. Based on IHS Global, Inc.'s updated forecast of the inpatient hospital market basket update and the MFP adjustment, the hospice payment update percentage for FY 2021 will be 2.4 percent for hospices that submit the required quality data and 0.4 percent (FY 2021 hospice payment update of 2.4 percent minus 2.0 percentage points) for hospices that do not submit the required data.

3. FY 2021 Hospice Payment Rates

There are four payment categories that are distinguished by the location and intensity of the services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides CHC, IRC, or GIP. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP is to treat symptoms that cannot be managed in another setting.

Additionally, in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 61 and beyond. In that final rule we also implemented a SIA payment for RHC when direct patient care is provided by a RN or social worker during the last 7 days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided on the day of service (up to 4 hours), if certain criteria are met. In order to maintain budget neutrality in the first year of implementation, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by a service intensity add-on budget neutrality factor (SBNF). The SBNF is used to reduce the overall RHC rate in order to ensure that SIA payments are budget-neutral. At the beginning of every fiscal year, SIA utilization is compared to the prior year in order calculate a budget neutrality adjustment. For FY 2021, we calculated the SBNF using FY 2019 utilization data. For FY 2021, the SBNF that would apply to days 1 through 60 is calculated to be 1.0002 and the SBNF that would apply to days 61 and beyond is calculated to be 1.0001.

As discussed in the FY 2021 Hospice Wage Index and Payment Rate Update

proposed rule (85 FR 20958), there have been very minor SBNF adjustments over the past several years suggesting that the utilization of the SIA from one year to the next remains relatively constant. Because the SBNF remains stable, we proposed to remove the factor to simplify the RHC payment rate updates.

In the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52156), we initiated a policy of applying a wage index standardization factor to hospice payments in order to eliminate the aggregate effect of annual variations in hospital wage data. In order to calculate the wage index standardization factor, we simulate total payments using the FY 2020 hospice wage index and FY 2020 payment rates and compare it to our simulation of total payments using the FY 2021 wage index with a 5 percent cap on wage index decreases and FY 2020 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2020 wage index and payment rates by payments for each level of care using the FY 2021 wage index and FY 2020 payment rates, we obtain a wage index standardization factor for each level of care. The wage index standardization factors for each level of care are shown in the tables 5 and 6.

The FY 2021 RHC payment rates are shown in Table 5. The FY 2021 payment rates for CHC, IRC, and GIP are shown in Table 6.

TABLE 5: FY 2021 Hospice RHC Payment Rates

Code	Description	FY 2020 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	FY 2021 Hospice Payment Update	FY 2021 Payment Rates
651	Routine Home Care (days 1-60)	$194.50	1.0002	1.0002	X 1.024	$199.25
651	Routine Home Care (days 61+)	$153.72	1.0001	1.0004	X 1.024	$157.49

TABLE 6: FY 2021 Hospice CHC, IRC, and GIP Payment Rates

Code	Description	FY 2020 Payment Rates	Wage Index Standardization Factor	FY 2021 Hospice Payment Update	FY 2021 Payment Rates
652	Continuous Home Care Full Rate = 24 hours of care	$1,395.63 ($58.15/hourly rate)	1.0023	X 1.024	$1,432.41 ($59.68/hourly rate)
655	Inpatient Respite Care	$450.10	1.0004	X 1.024	$461.09
656	General Inpatient Care	$1,021.25	0.9999	X 1.024	$1,045.66

Sections 1814(i)(5)(A) through (C) of the Act require that hospices submit quality data, based on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index and Payment Rate Update final rule (76 FR 47320 through 47324), we implemented a HQRP as required by section 3004 of the Affordable Care Act. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. The FY 2021 payment rates for hospices that do not submit the required quality data would be updated by the FY 2021 hospice payment update percentage of 2.4 percent minus 2 percentage points. These rates are shown in Tables 7 and 8.

TABLE 7: FY 2021 Hospice RHC Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2020 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	FY 2021 Hospice Payment Update of 2.4% minus 2 percentage points = +0.4%	FY 2021 Payment Rates
651	Routine Home Care (days 1-60)	$194.50	1.0002	1.0002	X 1.004	$195.36
651	Routine Home Care (days 61+)	$153.72	1.0001	1.0004	X 1.004	$154.42

TABLE 8: FY 2021 Hospice CHC, IRC, and GIP Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2020 Payment Rates	Wage Index Standardization Factor	FY 2021 Hospice Payment Update of 2.4% minus 2 percentage points = +0.4%	FY 2021 Payment Rates
652	Continuous Home Care Full Rate= 24 hours of care	$1,395.63 ($58.15/hourly rate)	1.0023	X 1.004	$1,404.44 ($58.52/ hourly rate)
655	Inpatient Respite Care	$450.10	1.0004	X 1.004	$452.08
656	General Inpatient Care	$1,021.25	0.9999	X 1.004	$1025.23

A summary of the comments we received regarding the payment rates and the elimination of the SBNF and our responses to those comments appear below:

Comment: Several commenters did not support CMS's proposal to sunset the SBNF and believes the SBNF recalibration should continue on an annual basis. They suggested that the SBNF serves an important purpose to retain budget neutrality going forward if visits in the last seven days of life increase. They stated that the SIA payments have served to align payment with costs of care and that the SIA payments help balance the cost of short-length-of stay patients for whom hospices receive very little reimbursement, but may provide many hours of intense care by professional staff. A few commenters stated that the FY 2020 payment rule's recalibration of the payment rates has resulted in a considerable increase in the hourly rate for CHC, and could have an impact on SIA utilization going forward; that is, the significant increase in the CHC rate may incentivize an increase in visits made during the last 7 days of life. On the other hand, several commenters were supportive of CMS' efforts to simplify Medicare payment calculations where warranted, and understands CMS' rationale for eliminating the SBNF. They stated that the removal of the SBNF from RHC payment updates would result in a more administratively simple application of the RHC payment rate updates. One commenter recommended that CMS wait to implement this change. Many commenters requested that CMS continue to monitor visits in the last 7 days of life to ensure that current trends do not change in light of the increased payment amount associated with the CHC rate.

Response: After considering the comments received in response to the proposed removal of the SBNF, we are not finalizing the removal of the SBNF for FY 2021. As noted by commenters, we rebased the CHC payment amount in FY 2020. Given the increase to the CHC hourly rate in FY 2020, we agree that it is prudent to evaluate FY 2020 utilization data prior to eliminating the SBNF. We will continue to analyze data on visits in the last 7 days of life and whether there are changes in utilization that could affect overall budget neutrality. If there continues to be very minor SBNF adjustments in the future, suggesting that the utilization of the SIA from one year to the next remains relatively constant, we may propose to remove the factor to simplify the RHC payment rate updates in future rulemaking.

Comment: While outside the scope of the proposed rule, two commenters noted their support of the suspension of the sequestration reduction due to the public health emergency (PHE) in response to the COVID–19 pandemic. One commenter recommended that quality reporting be suspended for the duration of CY 2020 and that hospices be held harmless from a negative payment adjustment for the remainder of the 2020 performance period.

Response: While the HQRP is statutorily mandated under section 1814(i)(5)(A)(i) of the Act, we provided an exemption under its extraordinary and extenuating circumstances policy for the COVID–19 pandemic as discussed in the FY 2016 Final Rule (80 FR 47194). We may grant exemptions or

extensions to hospices without a request if it determines that an extraordinary circumstances exemption (ECE), such as an act of nature including a pandemic, affects an entire region or locale. Accordingly, to allow all Medicare-certified hospices to focus on patient care during the start of the COVID–19 pandemic, we granted such an exemption that ended on June 30, 2020. This limited timeframe allowed hospices time to address issues and continue with submitting quality data for public reporting starting on July 1, 2020. Further, in coordination with other provider-types who have also been given blanket waivers, CMS expects to suspend penalties for Quarter 1 (Q1) and Q2 of 2020 (January 1 through June 30, 2020). Therefore, the calendar year 2020 data used for meeting the HQRP requirements include July 1 through December 31, 2020. This means that even if hospice providers submit the Hospice Item Set and CAHPS® Hospice Survey data for Q1 and Q2 2020, we will not include any of that data for purposes of calculating whether a hospice meets the HQRP requirements impacting FY 2022 payments. We provided a tip sheet to assist providers with this issue that can be accessed at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/HQRP-Requirements-and-Best-Practices.*

Final Decision: We are finalizing the FY 2021 payment rates in accordance with statutorily-mandated requirements. We are not finalizing the removal of the SBNF at this time; the SBNF will be applied to the payment rates as shown in Tables 6 and 8.

4. Hospice Cap Amount for FY 2021

As discussed in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47183), we implemented changes mandated by the IMPACT Act of 2014 (Pub. L. 113–185). Specifically, for accounting years that end after September 30, 2016 and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the CPI–U. The hospice cap amount for the FY 2021 cap year will be $30,683.93, which is equal to the FY 2020 cap amount ($29,964.78) updated by the FY 2021 hospice payment update percentage of 2.4 percent.

A summary of the two comments we received regarding the hospice cap amount and our responses to those comments appear below:

Comment: MedPAC recommended reducing the hospice aggregate cap by 20 percent and wage adjusting the hospice aggregate cap.

Response: We appreciate the commission's recommendation, however, we do not have the statutory authority to wage adjust or reduce the hospice cap amount.

Comment: Another commenter suggested that the cap amount is an area that CMS could explore under its program integrity authority using available claims and quality data to target enforcement activities to hospices that regularly come close to or go over their aggregate cap amount.

Response: We appreciate the commenter's suggestion to consider looking into the practices of hospices that regularly come close to or exceed their aggregate cap to target further program integrity efforts. We will continue to closely monitor this issue and address any identified concerns, if necessary.

Final Decision: We are finalizing the update to the hospice cap in accordance with statutorily-mandated requirements.

C. Election Statement Content Modifications and Addendum To Provide Greater Coverage Transparency and Safeguard Patient Rights

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), we finalized modifications to the hospice election statement content requirements at § 418.24(b) to increase coverage transparency for patients under a hospice election. In addition to the existing election statement content requirements at § 418.24(b), we finalized that hospices also would be required to include the following on the election statement:

- Information about the holistic, comprehensive nature of the Medicare hospice benefit.
- A statement that, although it would be rare, there could be some necessary items, drugs, or services that will not be covered by the hospice because the hospice has determined that these items, drugs, or services are to treat a condition that is unrelated to the terminal illness and related conditions.
- Information about beneficiary cost-sharing for hospice services.
- Notification of the beneficiary's (or representative's) right to request an election statement addendum that includes a written list and a rationale for the conditions, items, drugs, or services that the hospice has determined to be unrelated to the terminal illness and related conditions and that immediate advocacy is available through the Beneficiary and Family Centered Care Quality Improvement Organization (BFCC–QIO) if the beneficiary (or representative) disagrees with the hospice's determination.

Also in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, we finalized the requirements as set forth at § 418.24(c) for the hospice election statement addendum titled, ''Patient Notification of Hospice Non-Covered Items, Services, and Drugs'' to include the following content requirements:

1. Name of the hospice.
2. Beneficiary's name and hospice medical record identifier.
3. Identification of the beneficiary's terminal illness and related conditions.
4. A list of the beneficiary's current diagnoses/conditions present on hospice admission (or upon plan of care update, as applicable) and the associated items, services, and drugs, not covered by the hospice because they have been determined by the hospice to be unrelated to the terminal illness and related conditions.
5. A written clinical explanation, in language the beneficiary and his or her representative can understand, as to why the identified conditions, items, services, and drugs are considered unrelated to the terminal illness and related conditions and not needed for pain or symptom management. This clinical explanation would be accompanied by a general statement that the decision as to whether or not conditions, items, services, and drugs is related is made for each patient and that the beneficiary should share this clinical explanation with other health care providers from which they seek services unrelated to their terminal illness and related conditions;
6. References to any relevant clinical practice, policy, or coverage guidelines.
7. Information on:
a. The purpose of addendum; and
b. the patient's right to Immediate Advocacy.
8. Name and signature of Medicare hospice beneficiary (or representative) and date signed, along with a statement that signing this addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not necessarily the beneficiary's agreement with the hospice's determinations.

While we finalized that the election statement modifications apply to all hospice elections, the addendum is only required to be furnished to beneficiaries, their representatives, non-hospice providers, or Medicare contractors who requested such information. Additionally, we finalized a policy that if the beneficiary (or representative) requested an addendum at the time of hospice election, the hospice has 5 days from the start of hospice care to furnish this information in writing.

Furthermore, if the beneficiary requested the election statement at the time of hospice election, but died within 5 days, the hospice is not required to furnish the addendum as the requirement would be deemed to have been met in this circumstance. If the addendum was requested during the course of hospice care (that is, after the date of the hospice election), we finalized a policy that the hospice has 72 hours from the date of the request to provide the written addendum. The election statement modifications and the election statement addendum requirements will be effective for hospice elections beginning on and after October 1, 2020 (that is, FY 2021).

While we finalized the content requirements for the election statement addendum, we did not mandate that hospices use a specific form. Hospices are to develop and design the addendum to meet their needs, similar to how hospices develop their own hospice election statement (84 FR 38507). Additionally, we finalized a policy that the signed addendum (and any signed updates) are a new condition for payment. However, this does not mean in order to meet this condition for payment that the beneficiary (or representative), or non-hospice provider needs to agree with the hospice's determination. For purposes of this condition for payment, we finalized the policy that the signed addendum is only an acknowledgement of the beneficiary's (or representative's) receipt of the addendum (or its updates) and this payment requirement is met if there is a signed addendum (and any signed updates) in the requesting beneficiary's medical record with the hospice. This addendum is not required to be submitted routinely with each hospice claim. Likewise, the hospice beneficiary (or representative) does not have to separately consent to the release of this information to non-hospice providers furnishing services for unrelated conditions, because the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule allows those doctors, nurses, hospitals, laboratory technicians, and other health care providers that are covered entities to use or disclose protected health information, such as X-rays, laboratory and pathology reports, diagnoses, and other medical information for treatment purposes without the patient's express authorization. This includes sharing the information to consult with other providers, including providers who are not covered entities, to treat a different patient, or to refer the patient (45 CFR 164.506).

We delayed the effective date of the election statement content modifications and the hospice election statement addendum until FY 2021 to allow hospices adequate time to make the necessary modifications to their current election statements, develop their own election statement addendum, and make any changes to their current software and business processes to accommodate the requirements. Additionally, with publication of the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule, we posted a modified model election statement and addendum on the Hospice Center web page to give hospices an illustrative example as they modify and develop own forms to meet the content requirements and best meet their respective needs.

While we did not make any proposals in the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule to the finalized election statement and election statement addendum content requirements at § 418.24, or the October 1, 2020 effective date, we solicited comments on both of these model examples to see if they are helpful in educating hospices in how to meet these requirements effective for hospice elections beginning in FY 2021. We received 45 comments from primarily hospices and industry associations. Below is a summary of those comments and our responses.

Comment: In general, commenters had many suggested revisions for the modified election statement and the election statement addendum. Comments on the modifications to the model election statement and the addendum included formatting changes and reordering the required items for ease of use and readability. Some commenters suggested language revisions to make some of the content requirements more clear. Other suggestions included the removal of certain statements because they are not content requirements, outlined in regulation, and a few commenters suggested adding additional language to further explain the purpose of the addendum.

Several commenters questioned what recourse the hospice has if the patient/representative refuses to sign the addendum, given the beneficiary signature is a content requirement. These commenters suggested a process similar to the Notices of Medicare Non-Coverage (NOMNC) where CMS has stated that ''[i]f the beneficiary refuses to sign the NOMNC the provider should annotate the notice to that effect and indicate the date of refusal on the notice.'' And finally, one commenter requested an example of a completed addendum as they stated that it would be helpful for hospices to understand what CMS expects in terms of the way to write the rationale for an unrelated condition, item, service, or drug that is considered to be communicated in a language the beneficiary can understand.

Response: We appreciate commenters taking the time and thoroughly reviewing the model examples of the modifications to the election statement and the election statement addendum posted on the Hospice Center web page. As noted in the proposed rule and in this final rule, these examples are only meant to be illustrative and are not required to be in the exact format as provided. We have accepted the majority of commenters' suggestions and have incorporated them into the model examples, which we will post on the Hospice Center web page with this final rule. We removed language and checkboxes that are not content requirements at § 418.24(b) or (c) for the election statement or the addendum. We did not accept those recommendations to add language that are not regulatory requirements. The model examples of the election statement and the addendum posted with this final rule include only those content requirements set forth at § 418.24(b) and (c). However, as we noted in the proposed rule, hospices can develop their election statement and election statement addendum in any format that best suits their needs as long as the content requirements at § 418.24(b) and (c) are met. The examples were intended to assist hospices in understanding how they could format their election statement and addendum to meet the content requirements.

To address the comment of beneficiary (or representative) refusal to sign the addendum, we again point to the statement that must be included on the addendum that the signature is only acknowledgement of receipt and not a tacit agreement to its contents. Additionally, if the beneficiary (or representative) requests the addendum, we believe that hospices would conduct due diligence that the beneficiary (or representative) has been informed about the purpose of the addendum and the rationale for the signature. However, we recognize that there may be those rare instances in which the beneficiary (or representative) may refuse to sign the addendum, even though he or she has requested the form. We did not make any proposals addressing situations in which the beneficiary (or representative)

refuses to sign a requested addendum. While we believe that this would be a rare occurrence given this is primarily a beneficiary (or representative) request to receive such form, we will consider whether this issue needs to be addressed in future rulemaking.

We do not believe that providing an example of a completed addendum would be particularly helpful because of the unique clinical conditions of hospice beneficiaries and given that determinations regarding what is related versus unrelated to a patient's terminal illness and related conditions are made on a case-by-case basis.

As mentioned previously in this final rule, we did not propose any new policies as they relate to the modifications to the hospice election statement or the addendum requirements. These policies were finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule with a delayed effective date of October 1, 2020. However, we still received comments on various aspects of the finalized policy and we have summarized these and responded below.

Comment: One commenter questioned if there is any impact on the election statement if non-covered items, services, or drugs are requested after the initial admission to hospice. That is, whether there are any additional documentation requirements to note that the addendum was requested. Another questioned whether there is a different form to sign, other than the election statement, if the patient requests the addendum after the effective date of the election acknowledging that the addendum was requested.

Response: If a beneficiary (or representative) requests the addendum after the effective date of the election, there is no impact on the election statement. Similarly, there is no separate form or additional documentation required if the beneficiary does request the addendum after the effective date of the election. As we stated in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, we would expect hospices to document that the addendum was discussed with the patient (or representative) similar to how other patient and family discussions are documented. However, we did not propose a specific format in which to document such conversations and hospices can develop their own processes to incorporate into their workflow. This could be done however the hospice determines best meets its' needs.

Comment: A commenter stated that the regulations for the election statement addendum do not include language addressing the issuance of a requested addendum at the time of hospice election but where the beneficiary dies within the first 5 days of hospice care. This commenter stated that the preamble of the FY 2020 Hospice Wage Index and Payment Rate Update final rule addressed this particular issue. Specifically, CMS stated that if a beneficiary requests the addendum at the time of hospice election and dies within 5 days from the start of the hospice election and before the hospice can furnish the addendum, the hospice would not be required to furnish such addendum after the patient has died, as this requirement would be deemed as being met in this circumstance.

Response: Commenters are correct that, in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38511), we stated that if the addendum is requested on the effective date of the hospice election (that is, the start of care date) and the beneficiary dies within the first 5 days from the start of hospice care and before the hospice is able to furnish the addendum, the addendum would not be required to be furnished after the patient has died, and this condition for payment would be considered met. While this was not codified in the regulations, we will issue sub-regulatory guidance to this effect and we will consider including this in the regulations in future rulemaking.

Comment: Several commenters remarked that there is conflicting language in § 418.24(c) as to who can request the addendum. Specifically, commenters referenced § 418.24(c)(6), which states that the beneficiary or representative should request the addendum and share the information with other health care providers. However, commenters stated that § 418.24(c) requires that the hospice provide the addendum to not only the requesting individual (or representative), but also to requesting non-hospice providers or Medicare contractors. One commenter expressed concern that the regulatory language at § 418.24(c) allows non-hospice providers and Medicare contractors to request the addendum absent the beneficiary (or representative) requesting such information from the hospice and this violates the rights of the patient to have control over their protected health information. A few commenters expressed concern that any lack of clarity regarding the addendum requirements could result in non-payment for hospice services given the addendum is a condition for payment.

Response: The regulations at § 418.24(c) reference who can request the addendum, that is the beneficiary (or representative), non-hospice provider, or Medicare contractor. Whereas, the regulations at § 418.24(c)(6) refer to one of the specific content items required on the addendum form, along with the statement that the individual should share this clinical explanation with other health care providers from which they seek items, services, or drugs unrelated to their terminal illness and related conditions.

We note that it is not a violation of patient rights to have control over their health information in the scenario where a non-hospice provider or Medicare contractor requests the addendum absent the beneficiary (or representative) requesting such information. As discussed previously in this final rule, the hospice beneficiary (or representative) does not have to separately consent to the release of this information to non-hospice providers furnishing services for unrelated conditions, because the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule allows those doctors, nurses, hospitals, laboratory technicians, and other health care providers that are covered entities to use or disclose protected health information, such as X-rays, laboratory and pathology reports, diagnoses, and other medical information for treatment purposes without the patient's express authorization (45 CFR 164.506).

Though non-hospice providers and Medicare contractors can request the addendum even in the event that the beneficiary (or representative) did not request this information, we remind commenters that this condition for payment is met only in those circumstances in which the beneficiary (or representative) has requested the addendum and there is a signed form in the hospice's medical record. In the event that a non-hospice provider or Medicare contractor requests the addendum, but the beneficiary (or representative) did not already request and sign the addendum, this would not be a violation of the condition for payment as described previously. Hospices can develop processes (including how to document such requests from non-hospice providers and Medicare contractors) to address circumstances in which the addendum was requested by a non-hospice provider or Medicare contractor but where there was no previous beneficiary

(or representative) request to receive the addendum.

Comment: One commenter requested that CMS clearly delineate in the final rule the differences between the election statement addendum and the Advance Beneficiary Notice (ABN) and provide guidance on when each document should be used as there are concerns that hospices may be confused as to each documents' purpose.

Response: We agree that it is important to ensure that hospices do not conflate these two documents and their respective purposes. We note that we provided detailed information on the purpose and use of the ABN in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38512).

The ABN, Form CMS–R–131,[3] is issued by providers (including independent laboratories, home health agencies, and hospices), physicians, practitioners, and suppliers to Original Medicare (Fee-for-Service) beneficiaries in situations where Medicare payment is expected to be denied. The ABN is issued in order to transfer potential financial liability to the Medicare beneficiary in certain instances, and its use is very limited for hospices. The three situations that would require issuance of the ABN by a hospice are:

- Ineligibility because the beneficiary is not determined to be ''terminally ill'' as defined in section 1879(g)(2) of the Act;
- Specific items or services that are billed separately from the hospice per diem payment, such as physician services, that are not reasonable and necessary as defined in either sections 1862(a)(1)(A) or 1862(a)(1)(C) of the Act; or
- The level of hospice care is determined to be not reasonable or medically necessary as defined in sections 1862(a)(1)(A) or 1862(a)(1)(C) of the Act.

Guidelines for issuing the ABN are published in the Medicare Claims Processing Manual, chapter 30, section 50. An ABN is not required to be given to a beneficiary for those items and services the hospice has determined to be unrelated to the terminal illness and related conditions, as these still may be covered under other Medicare benefits. Additionally, an ABN cannot be issued to transfer liability to the beneficiary when Medicare would otherwise pay for items and services. The purpose of the ABN is to inform beneficiaries of the listed items and services that Medicare in general, is not expected to approve, and the specific denial reason (that is, not medically reasonable and necessary). The hospice election statement addendum is intended to inform beneficiaries of items and services that the hospice benefit will not cover as the hospice has determined them to be unrelated to the terminal illness and related conditions. However, these items, services, and drugs may be covered under other Medicare benefits it eligibility and coverage conditions are met. Table 9 provides a quick reference as to the type of document that can be issued to Medicare hospice beneficiaries, the purpose of each document, the timing of when the document must be provided to the beneficiary, and when hospices would use the respective documents.

[3] CMS R–131. Advance Beneficiary Notice. *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-Items/CMS012932.*

TABLE 9: Differences between the Advance Beneficiary Notice (ABN) and the Hospice Election Statement Addendum

Type of Document	Purpose of Document	Timing to Provide to Beneficiary	When it is Used by Hospices
Advance Beneficiary Notice (ABN)	To transfer potential financial liability to the Medicare beneficiary in certain instances.	Prior to delivery of the item or service in question. The hospice must provide enough time for the beneficiary to make an informed decision on whether or not to receive the service or item in question and accept potential financial liability	If there is an item or service that is usually paid for by Medicare Part A but may not be paid for in this particular case because it is not considered medically reasonable and necessary. If a patient is not terminally ill If the level of hospice care is determined to be not reasonable or medically necessary.
Hospice Election Statement Addendum	To inform the beneficiary (or representative) upon request, of any items, services, or drugs the hospice will not be providing because the hospice has determined them to be unrelated to the terminal illness and related conditions.	If the addendum is requested at the time of hospice election, the hospice has 5 days from the effective date of the election to furnish this information in writing. If the addendum is requested during the course of hospice care (that is, after the effective date of the election), the hospice has 72 hours (or 3 days) from the date of the request to furnish this information in writing.	Upon beneficiary request, if the hospice has determined that certain items, services, and drugs are unrelated to the terminal illness and related conditions and not covered by hospice. However, these items, services, and drugs may be covered under other Medicare benefits if coverage and eligibility requirements are met.

Comment: A few commenters urged CMS to encourage the use of an electronic format for both the hospice election statement and the addendum given the shift of most hospice providers to electronic platforms. Several other commenters questioned whether the addendum could be provided via an electronic patient portal and whether there could be an electronic version for potential use in communicating with other non-hospice providers. Another commenter recommended that CMS provide additional guidance for the hospice community and Medicare contractors on patient/representative electronic signatures and include in such guidance the ability to print an electronically signed document to provide a hard copy to a patient or representative. Other commenters stated that they are hopeful that if the election statement is in an electronic format then the electronic exchange of same data elements can be used to provide hospice election information to Part D plans more timely.

Response: We agree with these commenters that the use of electronic platforms can help facilitate more timely notification of hospice elections and can be expanded to increase interoperability. As noted in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38511), hospices are free to develop their modified election statement and addendum to best meet their needs. This includes those hospices who develop these forms in an electronic format. As long as the content requirements at § 418.24(b) and (c) are met, there is nothing precluding a hospice from having an election statement and addendum in an electronic format.

While we did not specifically address the provision of the addendum via electronic patient portals or whether the addendum could be developed as an electronic version, we note that the requirement is that the information must be provided to the beneficiary (or representative), in writing. While we envisioned a hard copy document for ease of use and sharing with non-hospice providers, we note that we did not explicitly prohibit the use of an electronic patient portal or provision of the addendum as an electronic version, as we recognize information can be provided in a written, electronic format. We want hospices to be able to furnish

such information in the least burdensome way to facilitate the communication of this information to hospice patients and their families, and even potentially for communicating with non-hospice providers as suggested by the commenters. We also recognize that hospices may already have their existing election statements in an electronic format and hospices may prefer to have the addendum incorporated into their Electronic Medical Records (EMRs) as well. As long as the content requirements at § 418.24 (b) and (c) are met, including securing the beneficiary's (or representative's) signature acknowledging receipt of the addendum, there is nothing precluding a hospice from leveraging such technology. However, we require that the information be provided in a language and format that the beneficiary (or representative) understands. Therefore, if the beneficiary (or representative) receives the addendum in an electronic format but requests to have a hard copy version for their records, we expect that the hospice would accommodate such request.

The commenter is correct that there is no specific guidance addressing beneficiary (or representative) electronic signatures on the hospice election statement. Generally, it is at the contractor's discretion as to how they address patient (or representative) electronic signatures in their review of medical records. However, we will consider future guidance, if warranted, to address any issues as they relate to electronic signatures.

Finally, we are aware of some of the issues where Part D Plans are not aware of a beneficiary's hospice election in a timely fashion. We understand that delayed notifications of a hospice election prevent the Part D plan from placing patient-specific prior authorization on the drugs in the four classes commonly paid by the hospice providers; analgesics, anti-nauseants (antiemetics), laxatives, and antianxiety drugs (anxiolytics). Currently, hospices are encouraged to use an OMB approved form entitled ''Hospice Information for Medicare Part D Plans'' (OMB NO 0938–1269) to communicate hospice election and drug use to Part D plans.[4] However, since OMB form NO 0938–1269 was first approved, hospices have begun to use electronic health records (EHRs) in growing numbers. This development has opened the door to electronic transactions from the hospice to part D plans. The National Council for Prescription Drug Plans (NCPDP) convened a diverse task group which included payers, hospice organizations and processors to see if they could leverage hospice EHR capabilities to produce standard electronic transactions that can be used by Part D plans. CMS was pleased to learn that the NCPDP hospice task group is embarking upon a pilot project which extract data from a hospice's EHR and route that information to the correct Part D plan in real-time, thereby minimizing delays in the prior authorization process. We encourage hospices, their software vendors and Part D plans to participate in the pilot project and we await its outcome.

Comment: Most commenters still disagree with CMS's decision to make the election statement addendum a condition for payment. One commenter stated the addendum is redundant to existing obligations and that there is no basis for the addendum to be treated as a condition for payment for hospice services. This commenter added that the Social Security Act only authorizes the condition for hospice payment based on a patient's having made an election to receive hospice care and that an addendum, provided after the election, cannot and should not legally alter the election or make the election retroactively invalid for purposes of payment. Concerns about any errors to the addendum or an unreturned addendum could give rise to non-payment of hospice services for what CMS implies could be the patient's entire election period.

Response: We disagree with commenters that the election statement addendum should not be a condition for payment given the enormity of the decision of a Medicare beneficiary electing to receive hospice services. In fact, the content requirements for the hospice election statement at § 418.24 specifically state that there must be the individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness and related conditions, as well as beneficiary acknowledgement that certain Medicare services are waived by the election. Moreover, section 1812(d)(2)(A) of the Act makes it clear that ''except in such exceptional and unusual circumstances as the Secretary may provide . . . if an individual makes such an election for a period with respect to a particular hospice program, the individual shall be deemed to have waived all rights to have payment made by Medicare'' for services that are related to the treatment of the individual's condition for which a diagnosis of terminal illness has been made. The Secretary has not provided for any ''unusual and exceptional circumstances'' and in the 1983 hospice final rule (48 FR 56010) we stated that hospices are required to provide virtually all the care needed by terminally ill patients. Our position remains the same today.

We do not believe that the decision to elect hospice services can be made without full information and disclosure as to what items, services, and drugs the hospice will and will not be covering based on their determinations of what is and what is not related to the terminal illness and related conditions. As detailed in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38518), we believe making the hospice election statement addendum a condition for payment is necessary to ensure that hospices are diligent in providing this information to Medicare hospice beneficiaries on request. We regard this addendum as a means of accountability for hospices to provide coverage information to beneficiaries electing the hospice benefit.

In the FY 2020 Hospice Wage Index and Payment Rate Update proposed and final rules (84 FR 17570 and 84 FR 38484), we provided examples from OIG reports[5] [6] that highlight the issues with a patient's lack of knowledge regarding hospices' limitation on their coverage, and the potential for hospice non-coverage of certain expected items, services, and drugs. Also, as described in the preamble of the FY 2020 Hospice Wage Index and Payment Rate Update proposed rule, the impetus for this policy was not only from these various OIG reports, but from numerous anecdotal reports received by CMS describing situations in which hospice beneficiaries and their families had to continually seek items, services, and drugs outside of the hospice benefit to receive needed care that they expected the hospice would cover and provide.

One commenter remarked that requiring an addendum is redundant, implying that because hospices are already making determinations of relatedness, the beneficiary (or representative) is already being

[4] Medicare Part D Hospice Care Hospice Information for Medicare Part D Plans. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Instruction-and-Form-for-Hospice-and-Medicare-Part-D.pdf.*

[5] Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio. July 2018. *https://oig.hhs.gov/oei/reports/oei-02-16-00570.pdf.*

[6] Medicare Could Be Paying Twice for Prescription Drugs for Beneficiaries in Hospice (A–06–10–00059). June 2012. *https://oig.hhs.gov/oas/reports/region6/61000059.pdf.*

informed of these determinations in order to allow them to make treatment decisions that best align with their preferences and goals of care. While we are encouraged that many hospices are already providing this important coverage information to hospice beneficiaries, both the OIG reports and anecdotal reports, as mentioned previously in this final rule, indicate that a lack of coverage transparency continues to be an issue for hospice beneficiaries.

Comment: A few commenters requested clarity regarding transfer situations; when to update the addendum; situations where a beneficiary requests the addendum but where the hospice has determined that there are no unrelated conditions, items, services, or drugs; whether specific QIO language must be used; the timeframe for providing the addendum if requested after the effective date of the election but within the first 5 days of hospice care; handling situations in which the beneficiary elects hospice care but with a future hospice date; the timing to obtain a signature on the addendum; and whether the addendum must be provided to all individuals receiving hospice care, including non-Medicare patients.

Response: Regarding the timeframe for providing the addendum to a requesting beneficiary who has transferred from one hospice to another, we remind commenters that a transfer does not change the effective date of hospice election. That means, if the beneficiary (or representative) requests the addendum from the receiving hospice, the hospice would have 72 hours (or 3 days) to furnish this information in writing. As to when hospices should update the addendum, in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, we stated that hospices have the option to make updates to the addendum, if necessary, to include such conditions, items, services and drugs they determine to be unrelated throughout the course of a hospice election. This could also include updating the addendum in situation where a condition, item, service or drug was previously considered unrelated, and therefore included on the addendum, is now considered related, and therefore would be covered by the hospice and removed from the addendum. Given that hospices develop their own addendum, hospices may add additional language to inform beneficiaries that the addendum reflects the most accurate information that the hospice has at the time the addendum is completed and that updates would be provided, in writing, if there are any changes that would need to be included based on any new information. Additionally, if the beneficiary (or representative) requested the addendum but the hospice has determined that all conditions, items, services, and drugs were related, and thereby covered by the hospice, the hospice could explain to the beneficiary (or beneficiary) that it is furnishing all care or the hospice can provide the addendum noting that at the time of the request, the hospice has determined that there were no unrelated conditions, items, services, and drugs. Hospices are free to develop any process for addendum updates to distinguish whether any updates are additions, deletions, or modifications, similar to processes hospices have in place for updates to the hospice plan of care.

As for the comment regarding specific BFCC–QIO language, we note that we did include specific BFCC–QIO language in the FY 2020 Hospice Wage Index and Payment Rate Update proposed rule. We finalized a requirement that the election statement itself must include information on the BFCC–QIO (including the BFCC–QIO contact information), and both the election statement and the addendum must include a statement about the beneficiary's right to Immediate Advocacy. Hospices can use whatever language they choose as long as this information is included in accordance with the requirements at § 418.24.

If the beneficiary does not request the addendum on the effective date of the election (that it, the start of care date), but within the 5-day timeframe after the effective date, the hospice would have 72 hours (or 3 days) from the date of the request to furnish the addendum as the regulations are clear that the 5-day timeframe relates to whether the beneficiary (or representative) requested the addendum on the effective date of the election (that is, the start date of hospice care). Regarding those situations in which the beneficiary elects hospice care, but with a future effective date, we remind commenters that the addendum would be furnished to the beneficiary (or representative) within 5 days of the effective date of the election. For example, if the beneficiary elects hospice on May 1st with an effective date of May 7th, the addendum, if requested, would be provided within 5 days of May 7th. And because the beneficiary signature is an acknowledgement of receipt of the addendum, this means that the beneficiary would sign the addendum when the hospice provides it, in writing, to the beneficiary (or representative). We note that these finalized policies relating to the election statement modifications and the addendum are for beneficiaries receiving services under the Medicare hospice benefit. While the addendum is not required to be provided to non-Medicare patients, hospices can choose to do so.

Comment: One commenter recommended that to effectively address inappropriate spending outside of the Medicare hospice benefit, CMS must take steps in addition to the addendum policy, to identify the breadth of issues that are contributing to the problem. The commenter suggested analysis of the spending data to determine what proportion of this spending is occurring within the first weeks of hospice care when CMS systems have not been updated with Medicare election information and what proportion of this spending is a result a hospice informing the provider that the item, service, or drug is unrelated. Finally, this commenter stated that CMS must look at any additional systems issues, as well as any other delays that slow the posting of new beneficiary status information. This commenter also stated that a large proportion of non-hospice spending is a result of related items, services, or drugs but which are not reasonable and necessary under a hospice plan of care.

Response: We appreciate the suggestions made by this commenter and we note that we continue to analyze hospice utilization data, including analyzing data on live discharges, lengths of stay, pre-hospice spending, and non-hospice spending. We have previously shared these results through rulemaking and other mechanisms of communication. We also note that we have made every effort to enhance the processing time of the hospice NOE to ensure that Medicare systems are updated in a timelier fashion. Specifically, effective January 1, 2018, hospices can submit the NOE via Electronic Data Interchange (EDI). EDI transmission and receipt of NOEs would reduce, and potentially eliminate, problems with NOEs that result from Direct Data Entry (DDE) keying errors. Hospices could export data from their electronic medical record or other software system into the EDI format without human intervention. We continually look at ways to further streamline these processes and appreciate commenter suggestions. We will consider the commenter's recommendations moving forward as we continue to analyze the effects of current hospice policies and for any future rulemaking and other efforts.

Comment: Most commenters recommended that CMS delay the

October 1, 2020 effective date because of the public health emergency declared by the Secretary in response to the COVID–19 pandemic. Specifically, commenters recommended a delay of at least one full year beyond the end date of the COVID–19 public health emergency because of concerns that hospices have shifted their operational priorities to address the pandemic and have not had time to complete the modifications to the election statement, develop the addendum, or establish new processes and train new staff on the new content requirements. Commenters also expressed concerns over EMR software readiness citing that EMR vendors have not provided any deliverables related to the modifications to the election statement and the addendum, and that hospices need delivery of software modifications in order to test the software, as well as develop processes and prepare for implementation.

Commenters also stated that, based on their research and inquiries to the Medicare contractors and the BFCC–QIOs, there has been no communication from CMS to the contractors related to the addendum as a condition for payment, or to the BFCC–QIOs related to a patient/representative request for Immediate Advocacy if the beneficiary (or representative) disagrees with the hospices determinations as to those items, services, and drugs the hospice has determined to be unrelated to the terminal illness and related conditions. These commenters cited the delayed implementation of OASIS–E as a result of the public health emergency as precedent and requested a similar delay for the addendum requirements as this would allow for adequate time for hospices, EMR vendors, Medicare contractors, and BFCC–QIOs to be fully prepared for these changes.

Response: We appreciate the magnitude of efforts undertaken by hospice providers as our country responds to the public health emergency for the COVID–19 pandemic. The effective date for the election statement modifications and the addendum implementation are effective for hospice elections on and after October 1, 2020 and this finalized policy already reflects a delayed effective date of 1 year. We note that there were no proposed changes to the election statement modifications or the addendum in the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule, therefore, all of the content requirements were finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule. We expect that hospices have already begun making the modifications to their election statements and developing their addendums in anticipation of a FY 2021 effective date and well before the start of the public health emergency. We also anticipate that hospices already have engaged with their EMR vendors to start making the necessary changes resulting from a policy that was finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule but with a delayed effective date. The expectation was that hospices would start making these modifications when these requirements were finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (published on August 6, 2019). The public health emergency underscores the importance of providing the ''Patient Notification of Hospice Non-Covered Items, Services, and Drugs'' to requesting hospice beneficiaries to ensure they are able to make treatment decisions to best meet their needs during this time.

We continue to have ongoing discussions with the MACs and BFCC–QIOs and will continue to provide education throughout the upcoming months leading up to the effective date of this policy. This will include the release of sub-regulatory guidance, and MLN® articles to ensure education is furnished to all relevant stakeholders. We assure hospices that all parties will be aware of the policies and their respective roles. And with any new policy, we will continue to monitor and communicate with stakeholders to determine if any future changes are warranted. The goal is to ensure the least amount of burden to providers while also ensuring beneficiary protection and engagement.

In summary, the hospice election statement modifications and the hospice election statement addendum requirements at 42 CFR 418.24(b) and (c) will be effective for hospice elections beginning on and after October 1, 2020 as finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38520). The hospice election statement addendum will remain a condition for payment and as finalized, this condition for payment would be met if there is a signed addendum (and its updates) in the requesting beneficiary's hospice medical record. The signed addendum is only acknowledgement of the beneficiary's (or representative's) receipt of the addendum and not agreement with the hospice's determination. To assist hospices in understanding these content requirements and based on comments received, we have posted with this final rule, the modified model examples of the hospice election statement and hospice election statement addendum on the Hospice Center web page as illustrative examples. As finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, hospices will make the election statement modifications and develop the addendum to best suit their needs as long as the content requirements are met.

D. Hospice Quality Reporting Program (HQRP)

Although CMS did not propose any changes to the HQRP for FY 2021, some therapy associations commented and encouraged the agency to continue to provide adequate provider training to ensure accuracy and consistency in linking care planning and services with data collection to allow the data to effectively promote improved care planning and service implementation. Another commenter stated that CMS should require quality performance be factored into payment and determinations of any performance-based incentives for hospice providers. We thank commenters for their suggestions. While these comments are outside the scope of this rule, we assure commenters that we continue to consider ways to inform and educate hospices regarding quality reporting, data collection, and processes to ensure that hospice beneficiaries continue to receive high quality hospice care. We agree that quality performance should factor into performance-based incentives for hospice providers and the HQRP is one mechanism to promote such performance.

III. Collection of Information Requirements

This final rule does not impose any new or revised ''collection of information'' requirements or burden. For the purpose of this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of OMB's Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) implementing regulations. Since this rule does not impose any new or revised collection of information requirements or burden, the rule is not subject to the requirements of the PRA.

IV. Regulatory Impact Analysis

A. Statement of Need

This final rule meets the requirements of our regulations at § 418.306(c) and (d), which require annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions

of CBSAs or previously used MSAs, as well as any changes to the methodology for determining the per diem payment rates. This final rule also updates payment rates for each of the categories of hospice care, described in § 418.302(b), for FY 2020 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. Lastly, section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices, and this rule discusses changes in the requirements for the HQRP in accordance with section 1814(i)(5) of the Act.

B. Overall Impacts

We estimate that the aggregate impact of the payment provisions in this rule will result in an increase of $540 million in payments to hospices, resulting from the hospice payment update percentage of 2.4 percent for FY 2021. The impact analysis of this rule represents the projected effects of the changes in hospice payments from FY 2020 to FY 2021. Using the most recent data available at the time of rulemaking, in this case FY 2019 hospice claims data as of May 12, 2020, we apply the current FY 2020 wage index. Then, using the same FY 2019 data, we apply the FY 2021 wage index to simulate FY 2021 payments. Finally, we apply a budget neutrality adjustment so that the aggregate simulated payments do not increase or decrease due to changes in the wage index.

Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that, to the best of our ability presents the costs and benefits of the rulemaking.

C. Anticipated Effects

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The great majority of hospices and most other hospice-related health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $7.5 million to $38.5 million in any 1 year), or being nonprofit organizations. For purposes of the RFA, we consider all hospices as small entities as that term is used in the RFA. HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The effect of the FY 2021 hospice payment update percentage results in an overall increase of hospice payments of 2.4 percent, or $540 million. The distributional effects of the final FY 2021 hospice wage index do not result in a greater than 5 percent of hospices experiencing decreases in payments of 3 percent or more of total revenue. Therefore, the Secretary has determined that this rule will not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a MSA and has fewer than 100 beds. This rule will only affect hospices. Therefore, the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This final rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of $156 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. We have reviewed this rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on state or local governments.

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule

will be the number of reviewers of this rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we believe that the number of past commenters would be a fair estimate of the number of reviewers of this final rule. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of the proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the wage information from the May 2019 Bureau of Labor Statistics (BLS) for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $110.74 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). This rule consists of approximately 23,000 words. Assuming an average reading speed of 250 words per minute, it would take approximately 0.77 hours for the staff to review half of it. For each hospice that reviews the rule, the estimated cost is $85.27 (0.77 hour × $110.74). Therefore, we estimate that the total cost of reviewing this regulation is $4,519.31 ($85.27 × 53 reviewers).

D. Detailed Economic Analysis

1. Hospice Payment Update for FY 2021

The FY 2021 hospice payment impacts appear in Table 10. We tabulate the resulting payments according to the classifications (for example, provider type, geographic region, facility size), and compare the difference between current and future payments to determine the overall impact. The first column shows the breakdown of all hospices by provider type and control (non-profit, for-profit, government, other), facility location, facility size. The second column shows the number of hospices in each of the categories in the first column. The third column shows the effect of using the FY 2021 updated wage data. This represents the effect of moving from the FY 2020 hospice wage index to the FY 2021 unadjusted hospice wage index with the old OMB delineations. The fourth column shows the effect of moving from the old OMB delineations to the new OMB delineations with a 5 percent cap on wage index decreases. The aggregate impact of the changes in columns three and four is zero percent, due to the hospice wage index standardization factor. However, there are distributional effects of the FY 2021 hospice wage index. The fifth column shows the FY 2021 hospice payment update percentage of 2.4 percent as mandated by section 1814(i)(1)(C) of the Act, and is consistent for all providers. The 2.4 percent hospice payment update percentage is based on an estimated 2.4 percent inpatient hospital market basket update, reduced by a 0 percentage point productivity adjustment. It is projected that aggregate payments would increase by 2.4 percent, assuming hospices do not change their service and billing practices. The sixth column shows the estimated total impact for FY 2021.

We note that simulated payments are based on utilization in FY 2019 as seen on Medicare hospice claims (accessed from the CCW in May of 2020) and only include payments related to the level of care and do not include payments related to the service intensity add-on.

As illustrated in Table 10, the combined effects of all the proposals vary by specific types of providers and by location.

TABLE 10: Impact to Hospices for FY 2021

Hospice Subgroup	Hospices	FY 21 Updated Wage Data	New OMB Delineations (5% Cap)	Market Basket	Overall Total Impact (Adding Individual Percentage Changes)
All Hospices	4,760	0.0%	0.0%	2.4%	2.4%
Hospice Type and Control					
Freestanding/Non-Profit	594	0.0%	0.1%	2.4%	2.5%
Freestanding/For-Profit	3,002	0.0%	0.0%	2.4%	2.4%
Freestanding/Government	39	0.3%	0.0%	2.4%	2.7%

Freestanding/Other	362	0.1%	-0.1%	2.4%	2.4%
Facility/HHA Based/Non-Profit	381	-0.1%	0.0%	2.4%	2.3%
Facility/HHA Based/For-Profit	204	0.1%	0.0%	2.4%	2.5%
Facility/HHA Based/Government	94	0.0%	0.1%	2.4%	2.5%
Facility/HHA Based/Other	84	0.3%	0.2%	2.4%	2.9%
Subtotal: Freestanding Facility Type	3,997	0.0%	0.0%	2.4%	2.4%
Subtotal: Facility/HHA Based Facility Type	763	0.0%	0.0%	2.4%	2.4%
Subtotal: Non-Profit	975	0.0%	0.0%	2.4%	2.4%
Subtotal: For Profit	3,206	0.0%	0.0%	2.4%	2.4%
Subtotal: Government	133	0.2%	0.0%	2.4%	2.6%
Subtotal: Other	446	0.1%	-0.1%	2.4%	2.4%
Hospice Type and Control: Rural					
Freestanding/Non-Profit	147	0.3%	0.0%	2.4%	2.7%
Freestanding/For-Profit	335	0.2%	0.0%	2.4%	2.6%
Freestanding/Government	21	0.3%	0.0%	2.4%	2.7%
Freestanding/Other	48	0.2%	0.0%	2.4%	2.6%
Facility/HHA Based/Non-Profit	151	0.2%	0.0%	2.4%	2.6%
Facility/HHA Based/For-Profit	47	0.5%	0.0%	2.4%	2.9%
Facility/HHA Based/Government	68	0.1%	0.0%	2.4%	2.5%
Facility/HHA Based/Other	51	0.1%	0.0%	2.4%	2.5%
Facility Type and Control: Urban					
Freestanding/Non-Profit	447	0.0%	0.1%	2.4%	2.5%
Freestanding/For-Profit	2,667	0.0%	0.0%	2.4%	2.4%
Freestanding/Government	18	0.3%	0.0%	2.4%	2.7%
Freestanding/Other	314	0.1%	-0.1%	2.4%	2.4%
Facility/HHA Based/Non-Profit	230	-0.2%	0.0%	2.4%	2.2%
Facility/HHA Based/For-Profit	157	0.0%	0.0%	2.4%	2.4%
Facility/HHA Based/Government	26	0.0%	0.1%	2.4%	2.5%
Facility/HHA Based/Other	33	0.3%	0.3%	2.4%	3.0%
Hospice Location: Urban or Rural					
Rural	868	0.2%	0.0%	2.4%	2.6%
Urban	3,892	0.0%	0.0%	2.4%	2.4%

Hospice Location: Region of the Country (Census Division)					
New England	155	-0.7%	0.0%	2.4%	1.7%
Middle Atlantic	279	0.5%	0.0%	2.4%	2.9%
South Atlantic	562	0.0%	0.0%	2.4%	2.4%
East North Central	548	0.3%	0.0%	2.4%	2.7%
East South Central	261	0.1%	0.0%	2.4%	2.5%
West North Central	407	-0.6%	0.0%	2.4%	1.8%
West South Central	924	0.2%	0.0%	2.4%	2.6%
Mountain	484	-0.5%	0.0%	2.4%	1.9%
Pacific	1,094	0.0%	0.1%	2.4%	2.5%
Outlying	46	-0.7%	-0.1%	2.4%	1.6%
Hospice Size					
0 - 3,499 RHC Days (Small)	1,066	0.0%	0.0%	2.4%	2.4%
3,500-19,999 RHC Days (Medium)	2,142	0.0%	0.0%	2.4%	2.4%
20,000+ RHC Days (Large)	1,552	0.0%	0.0%	2.4%	2.4%

Source: FY 2019 hospice claims data from CCW accessed on May 12, 2020.

Region Key:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Middle Atlantic=Pennsylvania, New Jersey, New York;
South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin
East South Central=Alabama, Kentucky, Mississippi, Tennessee
West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West South Central=Arkansas, Louisiana, Oklahoma, Texas
Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming P**acific**= Alaska, California, Hawaii, Oregon, Washington
Outlying=Guam, Puerto Rico, Virgin Islands

2. Hospice Election Statement Addendum

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38553), we finalized modifications to the election statement content requirements at § 418.24(b) and (c) to include a hospice election statement addendum, effective for hospice elections beginning on and after October 1, 2020. This effective date reflects a 1-year delay to allow hospices to make the necessary modifications to their existing election statement, develop their own addendum to best meet their needs, and establish processes for incorporating the addendum into their work flow.

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38532), we estimated that the addendum requirement would generate an annualized net reduction in burden of approximately $5.2 million, or $3.7 million per year on an ongoing basis discounted at 7 percent relative to year 2016, over a perpetual time horizon beginning in FY 2021.

While we did not re-estimate this burden in the regulatory impact analysis in the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule, we received the following comment regarding the hospice election statement burden estimate as described and calculated in the FY 2020 Hospice Wage Index and Payment Rate Update final rule.

Comment: One commenter noted that there was no updated burden estimate in the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule even though we stated in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38533) that we would re-estimate the burden estimate using more current data for 2021 rulemaking. The commenter stated that the previous burden estimate underestimates the amount of time it takes to complete the addendum and requested an updated estimate in the FY 2021 Hospice Wage Index and Payment Rate Update final rule with an opportunity for stakeholder comment.

Response: We apologize for any oversight in providing an updated burden estimate in the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule. The calculated burden for completion of the hospice addendum is only an estimate using the most current data at the time of rulemaking. Hospices are already required to make determinations as to the items, services, and drugs that are to be included in the individualized hospice plan of care; therefore, this means they are also making decisions as what items, services, and drugs it will not be covering as the hospice has determined them to be unrelated to the terminal illness and related conditions.

We do not believe that a hospice can make a determination of what is related to the terminal illness and related conditions without also determining what is unrelated. Therefore, this decision making process is already occurring; the addendum is only requiring to furnish this information, in writing, to the beneficiary (or representative). We believe that hospices are developing their respective addendums to incorporate into their work flow processes in the most efficient way possible to ensure that the communication of these determinations is done in the most unobtrusive and least burdensome way possible.

We recalculated the overall burden using the May, 2019 BLS wage data and 2019 hospice claims data for this final rule. To calculate this burden estimate, we used the same methodology described in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38532). We calculated this updated estimate based on 1,387,331 hospice elections in FY 2019. Of these hospice elections, 27 percent of beneficiaries died within the first 5 days of hospice care, leaving 1,012,752 eligible hospice elections for this burden estimate (1,387,331 x 0.73). We remind commenters that the addendum would not need to be furnished if the beneficiary dies within 5 days of the hospice effective date. For FY 2021, we estimate the annualized net burden for hospice providers with the one-time form development and completion of election statement addendum to be $12.8 million. This is slightly higher than the estimated $11.3 million in the FY 2020 Hospice Wage Index and Payment Rate Update final rule primarily because there were more eligible hospice elections using FY 2019 hospice claims data compared to the FY 2017 hospice claims data used in the previous calculation. We estimate the annualized monetized net reduction in burden for non-hospice providers with the regulations change at § 418.24, Election Statement Addendum, to be $19.3 million. This would result in a total annualized net reduction in burden with the election statement addendum in FY 2021 to be $6.5 million. Because we included these burden estimates in the accounting statement in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38543), this updated estimate is not included in accounting statement in this FY 2021 Hospice Wage Index and Payment Rate Update final rule.

E. Accounting Statement

As required by OMB Circular A–4 (available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 11, we have prepared an accounting statement showing the classification of the transfers and costs associated with the provisions of this final rule. This table shows an estimated $540 million in transfers to hospices in FY 2021. All expenditures are classified as transfers to hospices. The costs for the hospice election statement addendum were accounted for in the FY 2020 Hospice Wage Index and Payment Rate final rule (84 FR 38543) and therefore these are not accounted for in this FY 2021 final rule accounting statement.

TABLE 11: Accounting Statement: Classification of Estimated Transfers and Costs, From FY 2020 to FY 2021

Category	Transfers
Annualized Monetized Transfers	$ 540 million*
From Whom to Whom?	Federal Government to Medicare Hospices

*The net increase of $540 million in transfer payments is a result of the 2.4 percent hospice payment update compared to payments in FY 2020.

F. Regulatory Reform Analysis Under E.O. 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' It has been determined that this rule is an action that primarily results in transfers and does not impose more than *de minimis* costs as described above and thus is not a regulatory or deregulatory action for the purposes of Executive Order 13771.

G. Conclusion

We estimate that aggregate payments to hospices in FY 2021 will increase by $540 million, or 2.4 percent, compared to payments in FY 2020. We estimate that in FY 2021, hospices in urban areas will experience, on average, 2.4 percent increase in estimated payments compared to FY 2020, while hospices in rural areas will experience, on average, 2.6 percent increase in estimated payments compared to FY 2020. Hospices providing services in the Middle Atlantic region would experience the largest estimated increases in payments of 2.9 percent. Hospices serving patients in areas in the New England and Outlying regions would experience, on average, the lowest estimated increase of 1.7 percent and 1.6 percent, respectively in FY 2021 payments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Dated: July 23, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 29, 2020

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–16991 Filed 7–31–20; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 170 and 171

RIN 0955–AA01

21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program

Correction

In rule document 2020–07419, beginning on page 25642 in the issue of Friday, May 1, 2020, make the following corrections:

§ 170.315 [Corrected]

■ 1. On page 25942, in § 170.315, in the second column, in the 27th through 28th lines, ''May 2, 2022'' should read ''June 30, 2020''.

[FR Doc. C2–2020–07419 Filed 8–3–20; 8:45 am]

BILLING CODE 1301–00–D

SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 28)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2020 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) updates for 2020 the fees that the public must pay to file certain cases and pleadings with the Board. Pursuant to this update, 88 of the Board's 135 fees will be increased and 47 fees will be maintained at their current levels.

DATES: This final rule is effective September 3, 2020.

FOR FURTHER INFORMATION CONTACT: David T. Groves at (202) 245–0327, or Andrea Pope-Matheson at (202) 245–0363. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3(a) provide for an annual update of the Board's entire user-fee schedule. Fees are generally revised based on the cost study formula set forth at 49 CFR 1002.3(d), which looks to changes in salary costs, publication costs, and Board overhead cost factors.

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as non-major, as defined by 5 U.S.C. 804(2).

Additional information is contained in the Board's decision, available at *www.stb.gov.*

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

Decided: July 28, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Aretha Laws-Byrum,

Clearance Clerk.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002–FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Section 1002.1 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Records Officer, $22.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $47.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including clerical work, etc. incidental thereto, at a rate of $32.00 per hour.

* * * * *

■ 3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) Schedule of filing fees.

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Into a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$5,700.
(2) (i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$2,500.
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered.	$4,000.
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	$3,300.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	$35,700.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$5,900.
(ii) Minor amendment	$100.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	$650.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	$2,100.
(7)–(10) [Reserved].	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$9,300.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	$2,200.
(iii) Petition for exemption under 49 U.S.C. 10502	$16,200.
(12) (i) An application involving the construction of a rail line	$96,600.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	$2,200.

Type of proceeding	Fee
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	$96,600.
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d).	$350.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii).	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	$7,900.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	$2,200.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$8,500.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24.	$2,100.
(16) An application for a land-use-exemption permit for a facility existing as of October 16, 2008 under 49 U.S.C. 10909.	$7,700.
(17) An application for a land-use-exemption permit for a facility not existing as of October 16, 2008 under 49 U.S.C. 10909.	$27,300.
(18)–(20) [Reserved].	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	$28,600.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$4,600.
(iii) A petition for exemption under 49 U.S.C. 10502	$8,100.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$600.
(23) Abandonments filed by bankrupt railroads	$2,400.
(24) A request for waiver of filing requirements for abandonment application proceedings	$2,300.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$2,000.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned.	$29,300.
(27) (i) Request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	$350.
(ii) A request to extend the period to negotiate a trail use agreement	$550.
(28)–(35) [Reserved].	
PART IV: Rail Applications to Enter Into a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$24,500.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$13,200.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$1,930,300.
(ii) Significant transaction	$386,000.
(iii) Minor transaction	$9,200.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$2,100.
(v) Responsive application	$9,200.
(vi) Petition for exemption under 49 U.S.C. 10502	$12,100.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$7,100.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,930,300.
(ii) Significant transaction	$386,000.
(iii) Minor transaction	$9,200.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$1,600.
(v) Responsive application	$9,200.
(vi) Petition for exemption under 49 U.S.C. 10502	$12,100.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$7,100.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$1,930,300.
(ii) Significant transaction	$386,000.
(iii) Minor transaction	$9,200.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,400.
(v) Responsive application	$9,200.
(vi) Petition for exemption under 49 U.S.C. 10502	$12,100.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$7,100.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,930,300.
(ii) Significant transaction	$386,000.
(iii) Minor transaction	$9,200.

Type of proceeding	Fee
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,700.
(v) Responsive application	$9,200.
(vi) Petition for exemption under 49 U.S.C. 10502	$8,500.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$7,100.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	$3,000.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$90,400.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$16,700.
(ii) Minor amendment	$100.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$1,000.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$10,300.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$350.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$350.
(49)–(55) [Reserved].	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	$350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology.	$150.
(iv) All other formal complaints (except competitive access complaints)	$350.
(v) Competitive access complaints	$150.
(vi) A request for an order compelling a rail carrier to establish a common carrier rate	$350.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	$11,500.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$9,000.
(60) Labor arbitration proceedings	$350.
(61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$350.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings.	$450.
(62) Motor carrier undercharge proceedings	$350.
(63) (i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.	$350.
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy.	$350.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).	$750.
(65)–(75) [Reserved].	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$1,600.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements.	$150.
(78) (i) The filing of tariffs, including supplements, or contract summaries	$1 per page. ($32 min. charge.)
(ii) The filing of water carrier annual certifications	$32.
(79) Special docket applications from rail and water carriers:.	
(i) Applications involving $25,000 or less	$75.
(ii) Applications involving over $25,000	$200.
(80) Informal complaint about rail rate applications	$750.
(81) Tariff reconciliation petitions from motor common carriers:.	
(i) Petitions involving $25,000 or less	$75.
(ii) Petitions involving over $25,000	$200.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$300.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	$53 per document.
(84) Informal opinions about rate applications (all modes)	$300.
(85) A railroad accounting interpretation	$1,400.
(86) (i) A request for an informal opinion not otherwise covered	$1,900.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).	$6,600.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.	$650.
(87) Arbitration of certain disputes subject to the statutory jurisdiction of the Surface Transportation Board under 49 CFR 1108:.	

Type of proceeding	Fee
(i) Complaint	$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(iii) Third Party Complaint	$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	$150.
(88) Basic fee for STB adjudicatory services not otherwise covered	$350.
(89)–(95) [Reserved].	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	$41 per delivery.
(97) Request for service or pleading list for proceedings	$31 per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in an STB or State proceeding that:.	
(i) Annual request does not require a **Federal Register** (FR) notice:	
(A) Set cost portion	$200.
(B) Sliding cost portion	$61 per party.
(ii) Annual request does require a FR notice:	
(A) Set cost portion	$450.
(B) Sliding cost portion	$61 per party.
(iii) Quarterly request does not require a FR notice:	
(A) Set cost portion	$52.
(B) Sliding cost portion	$15 per party.
(iv) Quarterly request does require a FR notice:	
(A) Set cost portion	$234.
(B) Sliding cost portion	$15 per party.
(v) Monthly request does not require a FR notice:	
(A) Set cost portion	$17.
(B) Sliding cost portion	$5 per party.
(vi) Monthly request does require a FR notice:	
(A) Set cost portion	$178.
(B) Sliding cost portion	$5 per party.
(99) (i) Application fee for the STB's Practitioners' Exam	$200.
(ii) Practitioners' Exam Information Package	$25.
(100) Carload Waybill Sample data:	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD–R.	$250 per year.
(ii) Specialized programming for Waybill requests to the Board	$129 per hour.

* * * * *

[FR Doc. 2020–16831 Filed 7–31–20; 4:15 pm]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200730–0202; RTID 0648–XX062]

Fisheries of the Northeastern United States; Illex Squid Fishery; Revised 2020 Illex Squid Specifications

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

ACTION: Temporary final rule.

SUMMARY: NMFS is increasing the specifications for the 2020 *Illex* squid fishery. This rule is required to ensure that the 2020 specifications are based on the best scientific information available. This rule is also intended to inform the public of the changes to increase the specifications for the remainder of the 2020 fishing year. This action will allow *Illex* squid fishery to benefit from the quota increase and achieve optimal yield.

DATES: Effective August 4, 2020, through December 31, 2020.

ADDRESSES: Copies of the revised specifications, including the Supplemental Information Report, and other supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Aly Pitts, Fishery Management Specialist, (978) 281–9352.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council manages the *Illex* squid fishery under the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Section 302(g)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) states that the Scientific and Statistical Committee (SSC) for each regional fishery management council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, ensuring maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing level (OFL). The regulations implementing the MSB FMP require the Council's MSB Monitoring Committee to develop specification recommendations for each species based upon the ABC advice of the Council's SSC. The regulations at 50 CFR 648.22(e) allow the Regional Administrator, in consultation with the Council, to adjust specifications during the fishing year.

At its May 2020 meeting, the Council's SSC reviewed preliminary work by its *Illex* Squid Working Group and concluded that the species continues to be lightly exploited and the fishery footprint is small relative to the entire management unit. The SSC recommended increasing the 2020 ABC

from 26,000 mt to 30,000 mt. The Council recommended this specification adjustment at its June 2020 meeting.

On March 1, 2018, we published *Illex* squid specifications for 2018–2020 (83 FR 8764), and the National Environmental Policy Act (NEPA) analysis for that rule considered a range of ABCs from 18,000–30,000 mt, and the final rule adopted an ABC of 24,000 mt for 2019 and projected the same ABC for 2020. On February 27, 2020, we revised these specifications to implement a 26,000 mt ABC (85 FR 11309) for 2020 based on the SSC's updated recommendation. The revised specifications implemented by this temporary final rule increase the 2020 *Illex* squid ABC to 30,000 mt.

The changes to the initial 2020 *Illex* squid specifications included in this action were analyzed during the development of the original 2018–2020 specifications. A 30,000 mt ABC was included in the range of alternatives. The public had an opportunity to comment on the 30,000 mt ABC during the development of the original 2018–2020 *Illex* specifications. These revised specifications will increase the 2020 commercial quotas by 14 percent by implementing a 28,644-mt domestic annual harvest (DAH).

Revised Specifications

We are implementing the revised 2020 specifications recommended by the Council and its SSC. The Council recommended that the status quo discard rate of 4.52 percent be reduced from the ABC, which results in a DAH amount of 28,644 mt for 2020 that would be maintained for the 2020 fishing year. Table 1 summarizes the recommended changes to the revised 2020 *Illex* squid specifications. This action makes no changes to the current commercial management measures.

TABLE 1—2020 *Illex* SQUID SPECIFICATIONS IN METRIC TONS

[mt]

	Current	Modified
OFL	Unknown	Unknown.
ABC	26,000	30,000.
Initial Optimum Yield	24,285	28,644.
DAH	24,285	28,644.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this temporary final rule is consistent with the MSB FMP, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

This temporary final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This temporary final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The Assistant Administrator for Fisheries, NOAA, finds it is unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). This action increases the 2020 specifications (*i.e.,* annual catch limits) for the *Illex* squid fishery based on new information, which is allowed pursuant to our regulatory in-season authority at 50 CFR 648.22(e). Implementing a 30,000-mt ABC was anticipated during development and implementation of the original specifications action (83 FR 8764, March 1, 2018), as well as at the June 2020 Council meeting. Where the public has had an opportunity to review a range of specifications that included the amount considered in this action, a delay in its effectiveness would not serve any legitimate purpose, while unnecessarily disadvantaging fishermen who wish to take advantage of the fishing opportunity that this action provides with increased quotas. A delay would be contrary to the public interest for this loss of potential economic opportunity, and it could also create confusion in the *Illex* squid fishery. This rule is being issued at the earliest possible date. We received the Council's Supplemental Information Report for this action on June 29, 2020. The revised specifications increase the quota and allow this predominantly summer fishery to benefit from the quota increase and achieve optimal yield. This rule should be effective as soon as possible to fully realize the intended benefits to the fishery.

Additionally, unlike actions that require an adjustment period to comply with new rules, *Illex* squid fishery participants will not be required to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this rule simply means adhering to the higher (less restrictive) catch limits set for the remainder of the *Illex* squid fishing year. Fishery stakeholders have been involved in the development of this action and are anticipating this rule. Therefore, there would be no added benefit to delaying the implementation of these specifications. For these reasons, a 30-day delay in effectiveness would be contrary to the public interest. As a result, we are waiving the requirement.

For the same reasons, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and these specifications shall be made effective on August 4, 2020.

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

Dated: July 30, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2020–16937 Filed 8–3–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200717–0195]

RIN 0648–BJ16

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements through regulations measures included in Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, as adopted by the Mid-Atlantic Fishery Management Council. This action is necessary to establish conservation and management measures for Atlantic chub mackerel. It is intended to promote the sustainable utilization and conservation of Atlantic chub mackerel by integrating this species as a stock in the fishery under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This amendment identifies goals and objectives for managing Atlantic chub mackerel; specifies status determination criteria; designates essential fish habitat; establishes a specifications process; sets annual catch limits for 2020–2022; and implements accountability measures, possession limits, permitting and reporting requirements, exempted fisheries, and other administrative measures for Atlantic chub mackerel

caught from Maine through North Carolina.

DATES: This final rule is effective September 3, 2020.

ADDRESSES: The Mid-Atlantic Council prepared an environmental assessment (EA) for Amendment 21 that describes the action and provides a thorough analysis of the impacts of the measures implemented by this rule and other alternatives considered. Copies of Amendment 21, including the EA, the Regulatory Impact Review, and the Regulatory Flexibility Act analysis, are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA and associated analysis is accessible via the internet *http://www.mafmc.org/supporting-documents.* Copies of the small entity compliance guide prepared for this action are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: *https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/.*

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281–9141.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this action is to establish long-term conservation and management measures for Atlantic chub mackerel off the U.S. Atlantic coast by integrating this species as a stock in the fishery under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). The FMP will now be referenced as the Mackerel, Squid, and Butterfish FMP to reflect the management of two species of mackerel (Atlantic mackerel and Atlantic chub mackerel). This action is needed to ensure the sustainability of the targeted Atlantic chub mackerel fishery, prevent overfishing, and resolve competing interests that have emerged since landings of Atlantic chub mackerel substantially increased in 2013. The measures implemented through this final rule replace temporary measures to regulate Atlantic chub mackerel catch implemented as part of Amendment 18 to the FMP (82 FR 40721; August 28, 2017). Those temporary measures, including a 1,297-mt annual landing limit, a 40,000-lb (18-mt) possession limit once the annual landing limit is reached, and permitting and reporting requirements, became effective on September 27, 2017, and expire on August 4, 2020.

On March 7, 2019, the Mid-Atlantic Fishery Management Council (Council) adopted final measures under Amendment 21 to the FMP. The Council reviewed the proposed regulations to implement these measures, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) on December 20, 2019. NMFS published a Notice of Availability (NOA) in the **Federal Register** on February 14, 2020 (85 FR 8534), informing the public that the Council had submitted this amendment to the Secretary of Commerce for review and approval. NMFS published a proposed rule that summarized the background for this action and outlined regulations implementing measures approved by the Council, corrections to existing regulations, and new Atlantic chub mackerel fishery exemptions proposed by the Regional Administrator (Item 13 of this preamble) on March 9, 2020 (85 FR 13603). The public comment period for the proposed rule ended on April 8, 2020, while NOA comments were accepted through April 14, 2020. After considering public comment on both the NOA and proposed rule, NMFS approved Amendment 21 on May 4, 2020.

Approved Measures

NMFS approved all measures proposed in Amendment 21, as described below. For a more detailed description of each measure, see the proposed rule prepared for this action.

1. Goals and Objectives

This action adds goals and objectives specific to managing Atlantic chub mackerel to the FMP's current list of goals and objectives. NMFS will use the following goals and objectives to evaluate if changes to Atlantic chub mackerel management measures are consistent with the FMP when deciding whether to approve a future management action:

- *Goal 1:* Maintain a sustainable Atlantic chub mackerel stock.
  - *Objective 1.1:* Prevent overfishing and achieve and maintain sustainable biomass levels that achieve optimum yield in the fisheries and meet the needs of Atlantic chub mackerel predators.
  - *Objective 1.2:* Consider and account for, to the extent practicable, the role of Atlantic chub mackerel in the ecosystem, including its role as prey, as a predator, and as food for humans.
- *Goal 2:* Optimize economic and social benefits from utilization of chub mackerel, balancing the needs and priorities of different user groups.
  - *Objective 2.1:* Allow opportunities for commercial and recreational Atlantic chub mackerel fishing, considering the opportunistic nature of the fisheries, changes in availability that may result from changes in climate and other factors, and the need for operational flexibility.
  - *Objective 2.2:* To the extent practicable, minimize additional limiting restrictions on the *Illex* squid fishery.
  - *Objective. 2.3:* Balance social and economic needs of various sectors of the Atlantic chub mackerel fisheries (*e.g.,* commercial, recreational, regional) and other fisheries, including recreational fisheries for highly migratory species.
- *Goal 3:* Support science, monitoring, and data collection to enhance effective management of Atlantic chub mackerel fisheries.
  - *Objective 3.1:* Improve data collection to better understand the status of the Atlantic chub mackerel stock, the role of Atlantic chub mackerel in the ecosystem, and the biological, ecological, and socioeconomic impacts of management measures, including impacts to other fisheries.
  - *Objective 3.2:* Promote opportunities for industry collaboration on research.

2. Designation of Essential Fish Habitat

This action defines Atlantic chub mackerel essential fish habitat (EFH) as follows:

- *Eggs:* Pelagic waters throughout the exclusive economic zone (EEZ) from North Carolina to Texas, including intertidal and subtidal areas, at temperatures of 15–25 °C;
- *Larvae:* Pelagic waters throughout the EEZ from North Carolina to Texas, including intertidal and subtidal areas, at temperatures of 15–30 °C; and
- *Juveniles and adults:* Pelagic waters throughout the EEZ from Maine to Texas, including intertidal and subtidal areas, at temperatures of 15–30 °C.

3. Management Unit

The Atlantic Chub Mackerel Management Unit is defined as Federal waters from Maine to North Carolina. Management measures, including the permitting and reporting requirements, possession limits, annual catch limit (ACL), and accountability measures (AM) discussed below only apply to vessels operating within the Atlantic Chub Mackerel Management Unit. Annual estimates of expected Atlantic chub mackerel catch from South Carolina through the east coast of Florida (*i.e.,* the area outside of the

management unit, but within the geographic area over which the acceptable biological catch (ABC) applies) will be deducted from the overall Atlantic chub mackerel ABC, as discussed further below under Item 6 of this preamble (the specifications process).

4. Status Determination Criteria

Under this action, overfishing is assumed to have occurred if more than 3,026 mt (6,671,188 lb) of Atlantic chub mackerel are caught from Maine through the east coast of Florida in a given year. This will serve as the Atlantic chub mackerel overfishing limit (OFL). If catch exceeds the OFL in 3 consecutive years, then the stock would be presumed to be overfished and the Council would need to develop a rebuilding plan. These status determination criteria will remain in effect until updated criteria are available based on an accepted stock assessment.

5. Optimum Yield and Maximum Sustainable Yield

This action sets Atlantic chub mackerel optimum yield (OY) and maximum sustainable yield (MSY) equal to the ABC (2,300 mt, or 5.07 million lb) until otherwise revised by the Council. Based on available information, the Council may set OY equal to or less than the ABC in future years through the specifications process described in the next section of this preamble.

6. Specifications Process

The annual specifications process used for other species managed under the FMP, as described at 50 CFR 648.22, also applies to Atlantic chub mackerel. Specifications could be set for up to 3 years at a time, subject to annual review. Under this action, all Atlantic chub mackerel catch counts towards one catch limit for the entire fishery; there is no separation of catch limits into commercial and recreational components. The Atlantic chub mackerel ABC, management uncertainty, discard estimate, and expected Atlantic chub mackerel catch from South Carolina through Florida could be adjusted through the specifications process.

As part of this process, the Council's Scientific and Statistical Committee (SSC) will recommend a stock-wide ABC that must be equal to or less than the OFL after considering scientific uncertainty. Each year, the Monitoring Committee will review fishery catch, survey data, and other available information to provide the Council with the following recommendations:

- An ACL that is calculated by deducting an estimate of expected catch from South Carolina through the east coast of Florida from the ABC;
- An overall annual catch target (ACT) that is equal to or less than the ACL to account for management uncertainty related to the ability of management measures to constrain catch and prevent the ACL from being exceeded; and
- A total allowable landing (TAL) limit derived by subtracting an estimate of expected dead discards from the ACT.

7. Final 2020 and Projected 2021–2022 Specifications

Table 1 summarizes the final Atlantic chub mackerel specifications for 2020 and projected specifications for 2021 and 2022 based on a fishing year that runs from January 1 through December 31 of each year. The 2,261.7-mt (4,986,132-lb) ACL results from deducting an estimate of South Carolina—Florida catch (38.3 mt or 84,500 lb) from the ABC. Deducting a 4-percent management uncertainty buffer from the ACL results in a 2,171.2-mt (4,786,687-lb) ACT for catch from Maine through North Carolina. Deducting a 6-percent discard estimate from the ACT results in a 2,040.9-mt (4,499,486-lb) TAL. As noted above, these specifications will be evaluated annually, and the Monitoring Committee could recommend adjustments to South Atlantic catch, management uncertainty, and discard rates based on updated data.

TABLE 1—FINAL 2020 AND PROJECTED 2021–2022 ATLANTIC CHUB MACKEREL SPECIFICATIONS

Specification	mt	lb
ABC	2,300	5,070,632
ACL	2,261.7	4,986,132
ACT	2,171.2	4,786,687
TAL	2,040.9	4,499,486

8. Possession Limits

At the beginning of each fishing year, all commercial vessels and recreational anglers are not subject to a possession limit for Atlantic chub mackerel. As Atlantic chub mackerel landings approach the TAL, NMFS will implement more restrictive commercial vessel possession limits through the AMs detailed in the next section of this preamble.

9. Accountability Measures

This action implements two in-season AMs and one post-season AM. To prevent the Atlantic chub mackerel ACT from being exceeded, NMFS will implement an 18.1-mt (40,000-lb) commercial vessel possession limit once 90 percent of the TAL is landed and a 4.5-mt (10,000-lb) possession limit once 100 percent of the TAL is landed. If the ACL is exceeded based on total catch by both the commercial and recreational fisheries within the Management Unit, NMFS will reduce the ACT by the amount of the overage as soon as possible in a subsequent fishing year.

10. Permit and Reporting Requirements

Any vessel fishing for, possessing, landing, or selling Atlantic chub mackerel from the Atlantic Chub Mackerel Management Unit must be issued either a valid Federal commercial or party/charter permit for any species managed by the FMP (Atlantic mackerel, *Illex* squid, longfin squid, or butterfish). The operator of any such commercial vessel fishing must obtain and retain on board a valid operator permit issued by the Greater Atlantic Regional Fisheries Office (GARFO). Similarly, a dealer purchasing and selling Atlantic chub mackerel must obtain a valid seafood dealer permit issued for these same species from GARFO. Finally, vessel operators must report the catch of Atlantic chub mackerel weekly on existing vessel trip reports (VTR, or logbooks) and comply with any applicable vessel monitoring system (VMS) declaration and reporting requirements for commercial vessels issued a permit under the FMP. Dealers purchasing Atlantic chub mackerel must report such purchases via existing weekly dealer reports.

11. Transit Provision

A vessel issued a Federal commercial fishing permit from GARFO that

possesses Atlantic chub mackerel in excess of the proposed possession limits may transit the Management Unit in certain circumstances. Transit through the Management Unit is allowed provided Atlantic chub mackerel was harvested outside of the Atlantic Chub Mackerel Management Unit and all gear is stowed and not available for immediate use.

12. Administrative Measures

The Council's current ABC control rule and risk policy documented in the regulations at §§ 648.20 and 21, respectively, now apply to Atlantic chub mackerel, along with the standardized bycatch reporting methodology regulations specified at § 648.18. This action clarifies that any changes to Atlantic chub mackerel measures must be made through an FMP amendment and cannot be made through the framework adjustment process outlined in § 648.25.

13. Exemption From Northeast Multispecies Mesh Requirements

This final rule adds Atlantic chub mackerel to the species exemption specified at § 648.80(b)(3)(i) and creates a new Atlantic chub mackerel fishery exemption at § 648.80(c)(5)(iii). These revisions exempt vessels from the Georges Bank and Southern New England (SNE) Regulated Mesh Area gear restrictions and allow vessels to fish for, harvest, possess, and land Atlantic chub mackerel when using small-mesh gear within both the SNE and Mid-Atlantic Exemption Areas defined at §§ 648.80(b)(10) and 648.80(c)(5)(i), respectively. Vessel operators must comply with the Mackerel, Squid, and Butterfish FMP gear restrictions and possession limits specified at §§ 648.23 and 26, respectively, along with the possession restrictions for other species outlined in § 648.80(b)(3)(ii).

NMFS consulted with the New England Council about these proposed changes to exempted fishing regulations on April 14, 2020, as required by the current regulations at § 648.80(b)(8). The New England Council considered information regarding the bycatch of regulated groundfish species by vessels that catch more than incidental amounts of Atlantic chub mackerel, including vessels targeting *Illex* squid. As summarized in the proposed rule and in the EA prepared for this action, available information indicates the bycatch of regulated groundfish species by vessels catching Atlantic chub mackerel is minimal. Despite expressing some concern regarding the limited data available on Atlantic chub mackerel trips, the New England Council did not oppose the proposed changes to exempted fisheries to facilitate the Atlantic chub mackerel fishery. The Regional Administrator determined that this information is sufficient to demonstrate bycatch levels are below thresholds for authorizing exempted fisheries, and that the exemptions implemented by this final rule would not jeopardize fishing mortality objectives of the Northeast Multispecies FMP.

14. Corrections

References to ''mackerel'' are revised to reference Atlantic mackerel throughout part 648 when appropriate; references to ''squid'' are revised to ''*Illex* squid'' and ''longfin squid'' when appropriate; and references to the ''Atlantic Mackerel, Squid, and Butterfish'' FMP or associated entities such as the Monitoring Committee are revised to the more general ''Mackerel, Squid, and Butterfish'' reference that is inclusive of both Atlantic mackerel and Atlantic chub mackerel.

Existing regulations at §§ 648.4(a)(5)(v) and 648.14(g)(4) are revised to make such text consistent with similar text for other fisheries and to incorporate Atlantic chub mackerel.

In § 648.4(a)(15), revisions to existing text ensure that a commercial fishing vessel must be issued a Federal permit for any commercial fishery of the Northeastern United States under part 648 instead of a specific forage species permit under § 648.4(a)(15), which does not actually exist.

In §§ 648.5 and 6, revisions to existing text ensure that the vessel operator and dealer permit requirements adopted by the Council under Amendment 18 are reflected in these sections.

In § 648.22, paragraph (a)(2) is revised to spell out the first use of the term ''annual catch limit'' and ''annual catch target.''

In §§ 648.22(a)(2), 648.22(b)(3)(v), 648.23(a)(2)(ii), and 648.24(c)(3), references to the butterfish ''mortality'' cap are revised to the butterfish ''discard'' cap upon the request of Council staff to more accurately reflect how such measures are implemented. Similarly, references to the Atlantic mackerel Tier 3 ''allocation'' in §§ 648.22(a)(3), 648.22(b)(2)(iv)(A), 648.22(c)(6), 648.24(b)(1)(i)(B), and §§ 648.26(a)(1)(iii) and (a)(2)(i)(B) are revised to reference ''catch cap'' instead.

Comments and Responses

During the public comment periods for the NOA and the proposed rule for this amendment, we received 5 comment letters from 6 individuals and organizations, including a letter from Pew Charitable Trusts (Pew) referencing 14,957 form letters submitted before final Council adoption of this action. All comments generally supported integrating this species into the FMP, but specific comments opposed setting OY equal to the ABC and certain deductions for setting catch levels, as detailed below. The following discussion summarizes the issues raised in the comments that were relevant to this action and associated NMFS's responses. Please note that, pursuant to section 304(a)(3) of the Magnuson-Stevens Act, when NMFS considers the responses to comments, NMFS may only approve or disapprove measures proposed in a FMP amendment, and may not change or substitute any measure in a substantive way.

Comment 1: Pew supported implementing conservation and management measures for Atlantic chub mackerel by integrating this species into the FMP, suggesting the Council take a precautionary approach to managing this species until sufficient scientific information is available to understand this species' role in the ecosystem. A joint letter from Wild Oceans and Conservation Law Foundation (Wild Oceans/CLF) noted this action demonstrates the Council's commitment to implementing its Ecosystem Approach to Fisheries Management policies by maintaining an adequate forage base to support ecosystem productivity. Lund's Fisheries Incorporated suggested the Council should collect data to better understand the stock throughout its range, including in the Gulf of Mexico and in waters outside of U.S. jurisdiction, to estimate the potential of the stock as ocean temperatures rise.

Response: This final rule implements Atlantic chub mackerel conservation and management measures based on the best scientific information available and integrates this species into the renamed Mackerel, Squid, and Butterfish FMP. As more information becomes available, the Council can revise such measures as appropriate.

Comment 2: Wild Oceans/CLF suggested the list of goals and objectives are comprehensive and appropriate, reflecting the role the species plays as prey for predators. Lund's and SeaFreeze Limited supported Objectives 2.1 and 2.2, indicating their vessels need operational flexibility and depend on access to the *Illex* squid fishery.

Response: This final rule implements the goals and objectives, as proposed.

Comment 3: Lund's and SeaFreeze supported EFH designations for all life history stages. Wild Oceans/CLF

indicated that EFH should be based on the best scientific information available and that the proposed broad designations limit effective targeted conservation efforts. They suggest more information is needed on spatial/temporal interactions with predators to inform predator EFH and identify multispecies habitat areas of particular concern. Pew stated that EFH information is limited and should be augmented to accurately determine EFH for all life stages, including spawning times/locations.

Response: The Atlantic chub mackerel EFH designations implemented in this action are based on the best scientific information available and encompass the breadth of known distribution of all life stages for this species. EFH designations can be revised through a future action if additional information becomes available to more precisely define EFH for particular life stages. The Council considered depth-specific EFH designations, but adopted more general definitions to include a broader area due to the limited information available for this species. The Council has funded efforts to collect additional information on Atlantic chub mackerel predation by other species, but that information is not currently available. Because identifying predator EFH and multispecies habitat areas of particular concern are beyond the scope of this action and were not considered by the Council, this final rule implements only the proposed Atlantic chub mackerel EFH designations.

Comment 4: Wild Oceans/CLF suggested the Atlantic Chub Mackerel Management Unit should extend to the east coast of Florida consistent with the SSC's recommendation for the ABC. They state this would give the Council the authority to regulate Atlantic chub mackerel throughout its range consistent with an ecosystem-based approach to managing the species. They suggested the proposed Management Unit leaves the stock unmanaged south of North Carolina, stating that it is important to manage a species throughout its range due to climate change. Lund's and SeaFreeze supported the proposed Management Unit.

Response: Atlantic chub mackerel landings south of North Carolina all occurred in Florida and accounted for only 0.3 percent of total east coast landings from 1999–2018. Consistent with the National Standard 3 Guidelines at § 600.320, the Council determined that such catch was immaterial to proper management, and that excluding those states from the Management Unit would not impair the Council's ability to sustainably manage the stock or meet the FMP goals and objectives. Atlantic chub mackerel catch south of North Carolina is accounted for through the deduction of estimated catch from South Carolina through the east coast of Florida from the ABC as part of the specifications process. The Council can adjust this catch estimate if catch exceeds the current estimate to ensure total catch does not exceed the ABC specified by the SSC. If the stock shifts due to climate change, it will likely move north due to warming waters, which would result in a greater portion of the stock covered by the Management Unit. Based on the above, this final rule implements the proposed Atlantic Chub Mackerel Management Unit.

Comment 5: One member of the public suggested that Atlantic chub mackerel is subject to overfishing and that the catch limit (presumably ABC) should be reduced to 1,200 mt. Lund's supported the proposed 2,300-mt ABC, recommending the SSC should continue to evaluate the potential to increase the ABC in the future. PEW indicated the ABC should not exceed the 2,300-mt ABC recommended by the SSC.

Response: This final rule implements an Atlantic chub mackerel ABC of 2,300 mt, as recommended by the Council's SSC. In July 2018, the Council's SSC concluded that catch levels similar to those recently observed are unlikely to result in overfishing based on expert judgement that the low fishery capacity in this region and generally high productivity of this species in fisheries throughout the world. The SSC noted that it may recommend a lower future ABC if fishing under a 2,300-mt ABC proves too risky to the stock. Any adjustment to the ABC, including both increases and decreases recommended by the SSC and adopted by the Council, could be implemented through a future action.

Comment 6: Pew and Wild Oceans/CLF opposed setting Atlantic chub mackerel OY equal to MSY and ABC. Citing National Standard 1 Guidelines and the Council's Ecosystem Approaches to Fisheries Management Guidance Document, they indicated that the Council should set OY lower than the ABC to account for the role this species plays as forage within the ecosystem. Wild Oceans/CLF noted that such guidance suggests that OY should be set further from MSY when MSY estimates and management controls are lacking or unavailable. They also recalled that the SSC's ABC recommendation did not include ecosystem considerations. They opposed the argument that forage/ecosystem importance has to be quantified by highlighting that krill OY was set to zero in the Coastal Pelagic Species FMP in the Pacific without any quantitative basis. Pew recommended the Council consider the benefits of protecting Atlantic chub mackerel beyond food production and evaluate tradeoffs between the value of chub mackerel as forage for other predators and maintaining trophic balance against their market value. Wild Oceans/CLF indicated that OY should be set at 2.86 million lb (1,297 mt) consistent with the annual landings limit set by Amendment 18.

Response: In recommending an ABC, the SSC noted that there is insufficient information on predatory mortality and the role of Atlantic chub mackerel in predator diets to recommend an OY lower than the ABC. The Council acknowledged this deficiency and funded a study to determine the importance of Atlantic chub mackerel to the diets of recreationally-important highly migratory species. This study is expected to be presented to the Council at its August 2020 meeting and could inform future decisions on the appropriate level for which to set OY. Absent information to inform the Council's decision, the Council had no basis for which to set OY lower than the ABC specific to Atlantic chub mackerel's role as forage for other species. The Council considered setting OY at 1,472 mt (3.25 million lb), which would achieve a 1,293 mt (2.85 million lb) TAL similar to temporary measures. However, the Council did not adopt this alternative because it was not supported by analysis or evidence that the foregone yield would result in notable ecosystem benefits. Further, setting OY at a level below ABC without sufficient justification for that lower level would be inconsistent with National Standard 2 of the Magnuson-Stevens Act requirement to use the best scientific information available. Based on the above, this final rule sets Atlantic chub mackerel OY equal to the ABC, as proposed.

Comment 7: Both Lund's and SeaFreeze opposed deductions for Atlantic chub mackerel catch from South Carolina through Florida, stating the catch is negligible and outside of the Management Unit. Lund's also opposed the 4-percent management uncertainty buffer in setting the ACL, stating that it is unnecessary given the low likelihood of overfishing this species. Lund's supported not separating commercial and recreational catch at this time, suggesting that recreational catch could be used as an indicator of stock abundance trends. Citing concerns that the stock was overfished, one member of the public recommended that the

maximum catch (presumably TAL) should be set at 1,000 mt.

Response: As noted in the response to Comment 4, it is necessary to deduct catch from South Carolina through Florida to fully account for all catch under the ABC. This deduction can be revised during the annual specifications process. Due to concerns regarding accurate species identification and under-reporting, the Council adopted a 4- percent management uncertainty buffer to reduce the likelihood that the ACL would be exceeded. The Council noted there is uncertainty about how the fishery would respond to management measures adopted in this action because they have never been used to constrain Atlantic chub mackerel catch previously. Historically, recreational landings have been less than 1e percent of total Atlantic chub mackerel landings, and discards are not well quantified in part based on difficulty differentiating mackerel species. The Council did not adopt separate commercial and recreational ACLs because recreational fishery sub-ACL would be quite small, difficult to monitor, and be based on uncertain data. Finally, as discussed above, the SSC does not think that recent catch levels would result in overfishing this stock. Based on the above, this final rule implements the 2020 and projected 2021–2022 catch limits as proposed, including a 4-percent management uncertainty buffer and one ACL that applies to both commercial and recreational catch.

Comment 8: Lund's and SeaFreeze supported the proposed possession limits, but one member of the public suggested that an 18,000-lb (8.16-mt) possession limit is sufficient without offering any explanation.

Response: This final rule implements the proposed possession limits, including those implemented as an AM. The Council did not consider an 18,000-lb (8.16-mt) possession limit and we cannot implement such a limit through this final rule. The Council can consider revising the possession limit through a future action, including via annual specifications.

Comment 9: Wild Oceans/CLF and SeaFreeze supported the proposed status determination criteria, with the former noting that alternative methods for developing these criteria are appropriate given the poor nature of existing science for Atlantic chub mackerel. Lund's, SeaFreeze, and Pew supported the proposed permit and reporting requirements, with Pew recommending collecting tow-by-tow information. Lund's and SeaFreeze supported the transiting provision, indicating that the flexibility is necessary to allow vessels to continue historic operations targeting Atlantic chub mackerel outside of the Management Unit. Lund's supported fishery/species exemptions for Atlantic chub mackerel, administrative measures, and corrections to existing regulations.

Response: This final rule implements the proposed status determination criteria, permitting and reporting requirements, transit provision, administrative measures, fishery/species exemptions for Atlantic chub mackerel, and regulatory corrections. This rule does not implement tow-by-tow data collections. Although the Council's Fishery Management Action Team noted that more information is needed to support the management of Atlantic chub mackerel and understand its role in the ecosystem, it did not recommend the Council adopt tow-by-tow reporting at this time. Because such reporting was not adopted by the Council and the commenter did not provide sufficient justification to warrant the increased time and cost burden to the public, this action implements the reporting requirements as proposed.

Changes From the Proposed Rule

This final rule revises the introductory text in § 648.7(b)(1)(i) to accommodate regulatory changes made by a final rule implementing Amendment 6 to the Tilefish Fishery Management Plan (RIN 0648–BJ38). Reference to the expiration of temporary Atlantic chub mackerel measures on December 31, 2020, included in that paragraph are removed by this final rule. The paragraph header ''Jigging exemption'' was removed from § 648.23(a)(2)(ii) to maintain consistent format with paragraph (a)(2)(i) of that section which does not have a paragraph header.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the Initial Regulatory Flexibility Act (IRFA) analysis, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed in the Amendment 21 EA to support the action. The proposed rule for this action includes a summary of the IRFA. A description of why this action was considered, the objectives of and the legal basis for this rule is contained in Amendment 21 and in the preambles to the proposed and this final rule. All of the documents that constitute the FRFA are available from NMFS (see **ADDRESSES**).

Summary of the Significant Issues Raised by Public Comments in Response to the IRFA. A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

The public did not raise any significant issues in response to the IRFA, so no changes were made from the proposed rule.

Description and Estimate of the Number of Small Entities to Which This Final Rule Would Apply

For the purposes of the Regulatory Flexibility Act (RFA) analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with Federal Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permits may be considered to be part of the same firm because they may have the same owners. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For purposes of the RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of $11 million (NAICS 11411) for all its affiliated operations worldwide. A business primarily engaged in for-hire (charter/party) operations is characterized as annual gross receipts not in excess of $7.5 million. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. The current ownership data set used to determine the size of the business entity

in this analysis is based on calendar years 2015–2017.

This action affects any commercial or party/charter vessel that catches Atlantic chub mackerel from Maine through North Carolina. Although there is the possibility that a vessel historically caught Atlantic chub mackerel without being issued a Federal permit, the number of such vessels is likely less than 10 based on dealer data. Therefore, for the purposes of this analysis, any vessel that reported any amount of Atlantic chub mackerel landings on VTRs submitted to GARFO during 2008–2017 would be potentially affected by this action. Based on this approach, 86 commercial fishing entities would be affected by this action, 85 of which (99 percent) were categorized as small business entities using the definition specified above. From 2015–2017, these entities averaged $1,343,855 in annual revenue from commercial fishing. Fewer than three entities depended upon Atlantic chub mackerel from more than 1 percent of total fishing revenues during 2015–2017. Seventy-seven party/charter entities would be affected by this action, all of which were classified as small businesses. These entities averaged $316,860 in annual fishing revenues during 2015–2017, with dependence on Atlantic chub mackerel assumed to be low based on available information and public input. Therefore, due to potential overlap between vessels conducting both party/charter and commercial operations, a maximum of 163 entities would be affected by this action, nearly all of which are small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0202. The proposed rule included reference to the burdens associated with vessel logbook reports under OMB control number 0648–0212. However, because we ultimately did not change logbook information collections or associated instructions, this final rule removes reference to that information requirement. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated to average, as follows:

1. Initial Federal vessel permit application, OMB# 0648–0202, (45 minutes/response);
2. Initial Federal dealer permit application, OMB# 0648–0202, (15 minutes/response); and
3. Initial Federal operator permit application, OMB# 0648–0202, (60 minutes/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

As noted in the proposed rule, although the no-action alternatives for most measures in this action would minimize adverse economic impacts, they do not meet the objectives for this action and would not be consistent with the Magnuson-Stevens Act. This final rule implements long-term measures that enable fishery participants to catch Atlantic chub mackerel at or close to their historic levels, with the TAL implemented by this action representing a 57-percent increase compared to the temporary landing limit implemented by Amendment 18. This action reduces the Atlantic chub mackerel ABC by 84,500 lb (38.3 mt) to fully account for the expected Atlantic chub mackerel catch (landings plus discards) from South Carolina through Florida based on historic data. Similarly, the 6-percent discard rate implemented by this action reflects the long-term discard estimates from available observer data. These measures are necessary to ensure the fishery does not exceed the overall Atlantic chub mackerel ABC and ACL, minimize the potential for overfishing this stock, and prevent overfishing from occurring, as required by the Magnuson-Stevens Act.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, we prepared a letter to permit holders that also serves as small entity compliance guide (the guide). Copies of the guide (*i.e.,* permit holder letter) will be sent to all entities issued a longfin squid, *Illex* squid, Atlantic mackerel, or butterfish permit. The guide and this final rule are available upon request from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 17, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.1, revise paragraph (a) to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, Atlantic chub mackerel, longfin squid, *Illex* squid, and butterfish fisheries (Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surfclam and ocean quahog fisheries (Atlantic Surfclam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the golden and blueline tilefish fisheries (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

* * * * *

■ 3. Amend § 648.2 by:
■ a. Revising the definition of ''Atlantic mackerel'';
■ b. Adding in alphabetical order the definition of ''Atlantic Chub Mackerel Management Unit'';

■ c. Removing the definition of ''Atlantic Mackerel, Squid, and Butterfish Monitoring Committee''; and
■ d. Revising the definition of ''Council'';
■ e. Adding in alphabetical order the definition of ''Mackerel, Squid, and Butterfish Monitoring Committee''.

The additions and revisions read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic Chub Mackerel Management Unit means an area of the Atlantic Ocean in which the United States exercises exclusive jurisdiction over all Atlantic chub mackerel fished for, possessed, caught, or retained in or from that is bounded on the west and north by the coastline of the United States; bounded on the east by the outer limit of the U.S. EEZ; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33°48′46.37″ N lat., 78°29′46.46″ W long., and then heading due east along 33°48′46.37″ N lat. to the outer limit of the U.S. Exclusive Economic Zone.

* * * * *

Atlantic mackerel means *Scomber scombrus.*

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, Atlantic chub mackerel, *Illex* squid, longfin squid, and butterfish; Atlantic surfclam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

* * * * *

Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Greater Atlantic Regional Fisheries Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

* * * * *

■ 4. Amend § 648.4, by revising paragraph (a)(5) introductory text, paragraphs (a)(5)(iii)(B), (C), (H), (I), (v), (15), and (c)(2)(vii) to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(5) *Mackerel, squid, and butterfish vessels.* Any vessel of the United States, including party and charter vessels, that fishes for, possesses, or lands Atlantic mackerel, *Illex* squid, longfin squid, or butterfish in or from the EEZ or Atlantic chub mackerel in or from the EEZ portion of the Atlantic Chub Mackerel Management Unit must have been issued and carry on board a valid Federal mackerel, squid, or butterfish vessel permit pursuant to this paragraph (a)(5).

* * * * *

(iii) * * *

(B) *Limited access mackerel permits.* A vessel of the United States that fishes for, possesses, or lands more than 20,000 lb (7.46 mt) of Atlantic mackerel per trip, except vessels that fish exclusively in state waters for Atlantic mackerel, must have been issued and carry on board one of the limited access Atlantic mackerel permits described in paragraphs (a)(5)(iii)(B)(*1*) through (*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *Tier 1 Limited Access Atlantic Mackerel Permit.* A vessel may fish for, possess, and land Atlantic mackerel not subject to a trip limit, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Tier 2 Limited Access Atlantic Mackerel Permit.* A vessel may fish for, possess, and land up to 135,000 lb (50 mt) of Atlantic mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Tier 3 Limited Access Atlantic Mackerel Permit.* A vessel may fish for, possess, and land up to 100,000 lb (37.3 mt) of Atlantic mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(C) *Eligibility criteria for Atlantic mackerel permits.* To be eligible to apply for a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit to fish for and retain Atlantic mackerel in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit, as applicable, for the preceding year, be replacing a vessel that was issued a limited access permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

* * * * *

(H) *Vessel baseline specification.* (*1*) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access Atlantic mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: An individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii)(H)(*1*) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

(*2*) If an Atlantic mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the Atlantic mackerel limited access application. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the Atlantic mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, the limited access Atlantic mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(*1*) of this section.

(I) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access Atlantic mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold,

or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.

* * * * *

(v) *Party and charter boat permits.* The owner of any party or charter boat that fishes for, possesses, or retains Atlantic mackerel, *Illex* squid, longfin squid, or butterfish in or from the EEZ or Atlantic chub mackerel in or from the EEZ portion of the Atlantic Chub Mackerel Management Unit, while carrying passengers for hire must have been issued and carry on board a valid Federal vessel permit pursuant to this paragraph (a)(5).

* * * * *

(15) *Mid-Atlantic forage species.* Any commercial fishing vessel of the United States must have been issued and have on board a valid Federal commercial vessel permit issued by GARFO pursuant to this section to fish for, possess, transport, sell, or land Mid-Atlantic forage species in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(b). A vessel that fishes for such species exclusively in state waters is not required to be issued a Federal permit.

* * * * *

(c) * * *

(2) * * *

(vii) The owner of a vessel that has been issued a Tier 1 or Tier 2 limited access Atlantic mackerel must submit a volumetric fish hold certification measurement, as described in paragraph (a)(5)(iii)(H) of this section, with the permit renewal application for the 2013 fishing year.

* * * * *

■ 5. In § 648.5, revise paragraph (a) to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, *Illex* squid, longfin squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; golden tilefish or blueline tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit; Mid-Atlantic forage species harvested in the Mid-Atlantic Forage Species Management Unit; or Atlantic chub mackerel harvested in or from the EEZ portion of the Atlantic Chub Mackerel Management Unit that is issued a permit, including carrier and processing permits, for these species under this part must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

■ 6. In § 648.6, revise paragraph (a)(1) to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * * (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surfclam, ocean quahog, Atlantic mackerel, *Illex* squid, longfin squid, butterfish, scup, bluefish, golden tilefish, blueline tilefish, and black sea bass; Atlantic surfclam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A dealer of Atlantic chub mackerel must have been issued and have in their possession, a valid dealer permit for Atlantic mackerel, *Illex* squid, longfin squid, or butterfish in accordance with this paragraph. A dealer of Mid-Atlantic forage species must have been issued and have in their possession, a valid dealer permit for any species issued in accordance with this paragraph.

* * * * *

■ 7. Amend § 648.7, by revising paragraph (a)(1) introductory text, and paragraphs (b)(1)(i), and (3)(ii) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * * (1) Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

* * * * *

(b) * * *

(1) * * *

(i) *General.* If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. Except for vessel owners or operators fishing under a surfclam or ocean quahog permit, or fishing under a private recreational tilefish permit, the owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must:

* * * * *

(3) * * *

(ii) *Atlantic mackerel owners or operators.* The owner or operator of a vessel issued a limited access Atlantic mackerel permit must report catch (retained and discarded) of Atlantic mackerel daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year Atlantic mackerel was caught; total pounds of Atlantic mackerel retained and total pounds of all fish retained. Daily Atlantic mackerel VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if Atlantic mackerel caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

■ 8. In § 648.10, revise paragraph (n) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(n) *Limited access Atlantic mackerel VMS notification requirements.* (1) A vessel issued a limited access Atlantic mackerel permit intending to declare into the Atlantic mackerel fishery must notify NMFS by declaring an Atlantic mackerel trip prior to leaving port at the start of each trip in order to harvest, possess, or land Atlantic mackerel on that trip.

(2) A vessel issued a limited access Atlantic mackerel permit intending to land more than 20,000 lb (9.07 mt) of Atlantic mackerel must notify NMFS of the time and place of offloading at least 6 hr prior prior to arrival, or, if fishing ends less than 6 hours before arrival,

immediately upon leaving the fishing grounds. The Regional Administrator may adjust the prior notification minimum time through publication in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

■ 9. In § 648.11, revise paragraphs (n)(1)(ii) through (iv) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(n) * * *

(1) * * *

(ii) A vessel that has a representative provide notification to NMFS as described in paragraph (n)(1)(i) of this section may only embark on an Atlantic mackerel trip without an observer if a vessel representative has been notified by NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specific Atlantic mackerel trip, within 24 hr of the vessel representative's notification of the prospective Atlantic mackerel trip, as specified in paragraph (n)(1)(i) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the Atlantic mackerel trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing Atlantic mackerel except as specified in paragraph (n)(1)(iii) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(iii) A vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(iii), that does not have a representative provide the trip notification required in paragraph (n)(1)(i) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 20,000 lb (9.07 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iv) If a vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(iii), intends to possess, harvest, or land more than 20,000 lb (9.07 mt) of Atlantic mackerel per trip or per calendar day, and has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or email address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

* * * * *

■ 10. In § 648.12, revise the introductory text to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surfclam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), O (skates), and P (Mid-Atlantic forage species) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC before approving any exemptions for the Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries, including exemptions for experimental fishing contributing to the development of new or expansion of existing fisheries for Mid-Atlantic forage species.

* * * * *

■ 11. Amend § 648.14 by:

■ a. Revising paragraphs (g)(1)(i) and (g)(1)(ii)(A);

■ b. Revising paragraph (g)(2) introductory text, (g)(2)(ii)(C), (D), (F), and (G);

■ c. Revising paragraph (g)(2)(v) introductory text and (g)(2)(v)(A);

■ d. Revising paragraph (g)(3) introductory text, (g)(3)(ii) and (iii), and (g)(4); and

■ e. Revising paragraph (w).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(1) * * *

(i) *Possession and landing.* Take and retain, possess, or land more Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish than specified under, or after the effective date of, a notification issued under §§ 648.22 or 648.24(d).

(ii) * * *

(A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish caught by a vessel that has not been issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish vessel permit, unless the vessel fishes exclusively in state waters.

* * * * *

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person owning or operating a vessel issued a valid Atlantic mackerel, *Illex* squid, longfin squid, or butterfish fishery permit, or issued an operator's permit, to do any of the following:

* * * * *

(ii) * * *

(C) Possess more than the incidental catch allowance of Atlantic mackerel, unless issued a limited access Atlantic mackerel permit.

(D) Take and retain, possess, or land Atlantic chub mackerel, Atlantic mackerel, squid, or butterfish in excess of a possession limit specified in § 648.26.

* * * * *

(F) Take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel after a closure of the entire commercial fishery, as specified under § 648.24(b)(1).

(G) Fish for, possess, transfer, receive, or sell; or attempt to fish for, possess, transfer, receive, or sell; more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip; or land, or attempt to land more than 20,000 lb (9.08 mt) of Atlantic mackerel per day after 95 percent of the river herring and shad cap has been harvested, if the vessel holds a valid Atlantic mackerel permit.

* * * * *

(v) *VMS reporting requirements in the directed Atlantic mackerel, longfin squid, and Illex squid fisheries.*

(A) Fail to declare via VMS into the directed Atlantic mackerel, longfin squid, or *Illex* squid fisheries by entering the fishery code prior to leaving port at the start of each trip if the vessel will harvest, possess, or land more than an incidental catch of Atlantic mackerel, longfin squid, or *Illex* squid and is issued a limited access Atlantic mackerel permit, Tier 1 or Tier 2 longfin squid moratorium permit, or *Illex* squid moratorium permit.

* * * * *

(3) *Charter/party restrictions.* Unless participating in a research activity as described in § 648.22(g), it is unlawful for the owner and operator of a party or charter boat issued an Atlantic mackerel, *Illex* squid, longfin squid, or butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

* * * * *

(ii) Sell or transfer Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish to another person for a commercial purpose.

(iii) Carry passengers for hire while fishing commercially under an Atlantic mackerel, *Illex* squid, longfin squid, or butterfish fishery permit.

(4) *Presumption.* For purposes of this part, the following presumption applies: All Atlantic chub mackerel, Atlantic mackerel and butterfish possessed on board a party or charter boat issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish fishery permit are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such species were harvested by a vessel without a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit and fishing exclusively in state waters or, for Atlantic chub mackerel, outside of the Atlantic Chub Mackerel Management Unit.

* * * * *

(w) *Mid-Atlantic forage species.* It is unlawful for any person owning or operating a vessel issued a valid commercial permit under this part to fish for, possess, transfer, receive, or land; or attempt to fish for, possess, transfer, receive, or land; more than 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(b). A vessel not issued a commercial permit in accordance with § 648.4 that fished exclusively in state waters or a vessel that fished Federal waters outside of the Mid-Atlantic Forage Species Management Unit that is transiting the area with gear that is stowed and not available for immediate use is exempt from this prohibition.

* * * * *

■ 12. Revise § 648.18 to read as follows:

§ 648.18 Standardized bycatch reporting methodology.

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans by the Standardized Bycatch Reporting Methodology: An Omnibus Amendment to the Fishery Management Plans of the Mid-Atlantic and New England Regional Fishery Management Councils, completed March 2015, also known as the SBRM Omnibus Amendment, by the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, National Marine Fisheries Service Greater Atlantic Regional Fisheries Office, and National Marine Fisheries Service Northeast Fisheries Science Center: Atlantic Bluefish; Mackerel, Squid, and Butterfish; Atlantic Sea Scallop; Atlantic Surfclam and Ocean Quahog; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Monkfish; Northeast Multispecies; Northeast Skate Complex; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; and Tilefish. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the SBRM Omnibus Amendment from the Greater Atlantic Regional Fisheries Office (*www.greateratlantic.fisheries.noaa.gov,* 978–281–9300). You may inspect a copy at the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

■ 13. Under part 648, revise the title of subpart B to read as follows:

Subpart B—Management Measures for the Mackerel, Squid, and Butterfish Fisheries

■ 14. Amend § 648.22 by:
■ a. Revising the section heading;
■ b. Revising paragraph (a) introductory text, (a)(2) and (3);
■ c. Adding paragraph (a)(5);
■ d. Revising paragraph (b)(2) introductory text, (b)(2)(i) and (ii), (b)(2)(iv)(A) introductory text, (b)(2)(iv)(A)(*1*) and (*2*);
■ e. Revising paragraph (b)(2)(v) introductory text and (b)(2)(v)(A);
■ f. Revising paragraphs (b)(3)(v) and (vii);
■ g. Adding paragraph (b)(5);
■ h. Revising paragraph (c) introductory text, (c)(1)(ii), (c)(2), (3), (6), (9); and
■ i. Revising paragraph (d)(1).

The revisions and additions read as follows:

§ 648.22 Mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications.* The Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC:

* * * * *

(2) *Butterfish*—Annual catch limit (ACL); Annual catch target (ACT) including RSA, DAH, DAP; bycatch level of the total allowable level of foreign fishing (TALFF), if any; and butterfish discard cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) *Atlantic mackerel*—ACL; commercial ACT, including RSA, DAH, Atlantic mackerel Tier 3 landings cap (up to 7 percent of the DAH), DAP; joint venture processing (JVP) if any; TALFF, if any; and recreational ACT, including RSA for Atlantic mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for Atlantic mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

* * * * *

(5) *Atlantic chub mackerel*—ACL, ACT, and total allowable landings (TAL), which, subject to annual review, may be specified for a period of up to 3 years.

(b) * * *

(2) *Atlantic Mackerel*—(i) *ABC.* The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide Atlantic mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *ACL.* The ACL or Domestic ABC is calculated using the formula ACL/Domestic ABC = stock-wide ABC − C, where C is the estimated catch of Atlantic mackerel in Canadian waters for the upcoming fishing year.

* * * * *

(iv) * * *

(A) *Commercial sector ACT.* Commercial ACT is composed of RSA, DAH, Tier 3 landings cap (up to 7 percent of DAH), dead discards, and TALFF, if any. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH,

Tier 3 landings cap (up to 7 of the DAH), DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of Atlantic mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. Economic considerations for the establishment of JVP and TALFF include:

(*1*) Total world export potential of Atlantic mackerel producing countries.

(*2*) Total world import demand of Atlantic mackerel consuming countries.

* * * * *

(v) *Performance review.* The Mackerel, Squid, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the Atlantic mackerel ACL at least every 5 years.

(A) If the Atlantic mackerel ACL is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any two consecutive years), the Mackerel, Squid, and Butterfish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

* * * * *

(3) * * *

(v) *Butterfish discard cap.* The butterfish discard cap will be based on a portion of the ACT (set annually during specifications) and the specified cap amount will be allocated to the longfin squid fishery as follows: Trimester I—43 percent; Trimester II—17 percent; and Trimester III—40 percent.

* * * * *

(vii) *Performance review.* The Mackerel, Squid, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the butterfish ACL in conjunction with review for the Atlantic mackerel fishery, as outlined in this section.

* * * * *

(5) *Atlantic chub mackerel*—(i) *ABC.* The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide Atlantic chub mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *Maximum sustainable yield (MSY).* The Atlantic chub mackerel MSY shall be set equal to the Atlantic chub mackerel ABC.

(iii) *OY.* The Atlantic chub mackerel OY shall be set equal to or less than the Atlantic chub mackerel ABC.

(iv) *ACL.* The ACL for the Atlantic Chub Mackerel Management Unit is calculated by subtracting an estimate of Atlantic chub mackerel catch from South Carolina through Florida from the Atlantic chub mackerel ABC or OY, whichever is less. The Monitoring Committee shall recommend an appropriate estimate of such catch on an annual basis through the specifications process. The ACL shall apply to both commercial and recreational catch of Atlantic chub mackerel; there will not be separate ACLs for the commercial and recreational Atlantic chub mackerel fisheries.

(v) *ACT.* The Atlantic chub mackerel ACT shall be equal to or less than the Atlantic chub mackerel ACL after deducting an estimate of management uncertainty. The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend an overall ACT to the MAFMC for both the commercial and recreational fishing sectors as part of the specifications process.

(vi) *TAL.* The Atlantic chub mackerel TAL shall be equal to or less than the Atlantic chub mackerel ACT after deducting an estimate of dead discards in both the commercial and recreational fisheries. The Monitoring Committee shall evaluate available data to recommend an estimate of total discards used to calculate the TAL in its recommendation to the MAFMC as part of the specifications process.

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Mackerel, Squid, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) * * *

(ii) The commercial and/or recreational ACT for Atlantic mackerel.

* * * * *

(2) Commercial quotas or total allowable landing limits, set after reductions for research quotas, management uncertainty, discards, an estimate of Atlantic chub mackerel catch from South Carolina through Florida, or any other applicable deduction specified in this section.

(3) The amount of longfin squid, *Illex* squid, and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(vi), and the amount of Atlantic mackerel that may be retained, possessed and landed by any of the limited access Atlantic mackerel permits described at § 648.4(a)(5)(iii) and the incidental Atlantic mackerel permit at § 648.4(a)(5)(iv).

* * * * *

(6) Commercial seasonal quotas/closures for longfin squid, *Illex* squid, and Atlantic chub mackerel; and landings cap for the Tier 3 Limited Access Atlantic mackerel permit.

* * * * *

(9) Recreational allocation for Atlantic mackerel.

* * * * *

(d) * * *

(1) The Mackerel, Squid, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Mackerel, Squid, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish a proposed rule in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for *Illex* squid, longfin squid, Atlantic mackerel, Atlantic chub

mackerel, or butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superseded as of the effective date of the final rule implementing the current year's annual specifications.

* * * * *

■ 15. In § 648.23, revise paragraph (a)(2)(ii) to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

* * * * *

(a) * * *

(2) * * *

(ii) During closures of the longfin squid fishery resulting from the butterfish discard cap, described in § 648.24(c)(3), vessels fishing for longfin squid using jigging gear are exempt from the closure possession limit specified in § 648.26(b), provided that all otter trawl gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

■ 16. Amend § 648.24 by:

■ a. Revising the introductory text to paragraph (b);

■ b. Revising paragraphs (b)(1)(i)(B), (b)(2), (b)(3), paragraph (b)(4) introductory text, (b)(5), and (6);

■ c. Revising paragraphs (c)(3) and (5);

■ d. Revising paragraph (d); and

■ e. Adding paragraph (e).

The revisions and additions read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) *Atlantic Mackerel AMs*—(1) * * *

(i) * * *

(B) Unless previously closed pursuant to paragraph (b)(1)(i)(A) of this section, NMFS will close the Tier 3 commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 Atlantic mackerel landings cap will be harvested. Unless otherwise restricted, the closure of the Tier 3 commercial Atlantic mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

* * * * *

(2) *Atlantic mackerel commercial landings overage repayment.* If the Atlantic mackerel ACL is exceeded and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Non-landing AMs.* In the event that the Atlantic mackerel ACL is exceeded, and that the overage has not been accommodated through the landing-based AM described in paragraph (b)(2) of this section, but is attributable to the commercial sector, then the exact amount, in pounds, by which the commercial Atlantic mackerel ACT was exceeded will be deducted from the following year's commercial Atlantic mackerel ACT, as a single-year adjustment.

(4) *Atlantic mackerel recreational AMs.* If the Atlantic mackerel ACL is exceeded and the recreational fishery landings are responsible for the overage, then the following procedure will be followed:

* * * * *

(5) *Atlantic mackerel ACL overage evaluation.* The Atlantic mackerel ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the Atlantic mackerel ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the Atlantic mackerel ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by May 15 of the fishing year in which the deductions will be made.

(6) *River herring and shad catch cap.* The river herring and shad cap on the Atlantic mackerel fishery applies to all trips that land more than 20,000 lb (9.08 mt) of Atlantic mackerel. NMFS shall close the limited access Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the river herring/shad catch cap has been harvested. Following closures of the limited access Atlantic mackerel fishery, vessels must adhere to the possession restrictions specified in § 648.26.

* * * * *

(c) * * *

(3) *Butterfish discard cap on the longfin squid fishery.* NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of each Trimester's butterfish discard cap allocation has been harvested.

* * * * *

(5) *Butterfish allocation transfer.* NMFS may transfer up to 50 percent of any unused butterfish allocation from the butterfish DAH to the butterfish discard cap on the longfin squid fishery if the butterfish catch in the longfin squid fishery is likely to result in a closure of the longfin squid fishery, and provided the transfer does not increase the likelihood of closing the directed butterfish fishery. NMFS may instead transfer up to 50 percent of the unused butterfish catch from the butterfish discard cap allocation to the butterfish DAH if harvest of butterfish in the directed butterfish fishery is likely to exceed the butterfish DAH, and provided the transfer of butterfish allocation from the butterfish discard cap allocation does not increase the likelihood of closing the longfin squid fishery due to harvest of the butterfish discard cap. NMFS would make this transfer on or about November 15 each fishing year, in accordance with the Administrative Procedure Act.

(d) *Notification.* Upon determining that a closure or trip limit reduction is necessary, the Regional Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure or trip limit reduction to all holders of Atlantic mackerel, *Illex* squid, longfin squid, and butterfish fishery permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure or trip limit reduction to recreational participants in the fishery; and publish notification of the closure or trip limit reduction in the **Federal Register**.

(e) *Atlantic Chub Mackerel AMs*—(1) *Commercial fishery closures.*

(i) When the Regional Administrator projects that 90 percent of the Atlantic chub mackerel TAL will be landed, the Regional Administrator will reduce the Atlantic chub mackerel possession limit as specified in § 648.26(e)(2)(i) through notification in the **Federal Register**.

(ii) When the Regional Administrator projects that 100 percent of the Atlantic chub mackerel TAL will be landed, the Regional Administrator will reduce the Atlantic chub mackerel possession limit as specified in § 648.26(e)(2)(ii) for the remainder of the fishing year (December 31) through notification in the **Federal Register**.

(2) *Overage repayment.* The Regional Administrator will evaluate both landings and dead discards in a single year to determine if the Atlantic chub mackerel ACL specified in § 648.22(b)(5) has been exceeded. If the Atlantic chub mackerel ACL has been exceeded, then catch in excess of the Atlantic chub mackerel ACT will be deducted from the Atlantic chub mackerel ACT as soon as possible in a following year as a single-year adjustment to the ACT. The Regional Administrator shall implement any changes to the Atlantic chub mackerel ACT through notification in the **Federal Register** in accordance with the Administrative Procedure Act.

(3) *Transiting.* Any vessel issued a valid commercial Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit in accordance with § 648.4 may transit the Atlantic Chub Mackerel Management Unit with an amount of Atlantic chub mackerel on board that exceeds the possession limits specified in this section to land in a port that is within the Atlantic Chub Mackerel Management Unit, provided that all Atlantic chub mackerel was harvested outside of the Atlantic Chub Mackerel Management Unit and that all gear is stowed and not available for immediate use as defined in § 648.2.

■ 17. Amend § 648.25, by revising the section heading and paragraph (a) introductory text to read as follows:

§ 648.25 Mackerel, squid, and butterfish framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. However, any changes to Atlantic chub mackerel measures contained in this part 648 must be made through an amendment to the FMP and cannot be conducted through a framework adjustment.

* * * * *

■ 18. Amend § 648.26 by revising paragraphs (a)(1) and (a)(2)(i)(B), and adding paragraph (e) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

* * * * *

(a) * * *

(1) *Initial possession limits.* A vessel must be issued a valid limited access Atlantic mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel from or in the EEZ per trip, provided that the fishery has not been closed, as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1 limited access Atlantic mackerel permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i)(A).

(ii) A vessel issued a Tier 2 limited access Atlantic mackerel permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i)(A).

(iii) A vessel issued a Tier 3 limited access Atlantic mackerel permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, or 90 percent of the Tier 3 landings cap has been harvested, as specified in § 648.24(b)(1)(i)(A) and (B), respectively.

(iv) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(v) Both vessels involved in a pair trawl operation must be issued a valid Atlantic mackerel permits to fish for, possess, or land Atlantic mackerel in the EEZ. Both vessels must be issued the Atlantic mackerel permit appropriate for the amount of Atlantic mackerel jointly possessed by both of the vessels participating in the pair trawl operation.

* * * * *

(2) * * *

(i) * * *

(B) During a closure of the Tier 3 commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(B), when 90 percent of the Tier 3 landings cap is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

* * * * *

(e) *Atlantic chub mackerel.* A vessel must be issued a valid Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit to fish for, possess, or land any Atlantic chub mackerel from or in the Atlantic Chub Mackerel Management Unit within the EEZ per trip. A vessel not issued a valid Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit in accordance with § 648.4 that is fishing exclusively in state waters or in the EEZ outside of the Atlantic Chub Mackerel Management Unit is exempt from the possession limits specified in this section.

(1) *Initial commercial possession limits.* A vessel issued a valid commercial Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit is authorized to fish for, possess, and land an unlimited amount of Atlantic chub mackerel per trip from the EEZ portion of the Atlantic Chub Mackerel Management Unit, provided that the fishery has not been closed, as specified in § 648.24(e)(1).

(2) *Commercial fishery closure possession limits.* Once the commercial fishery is closed in accordance with § 648.24(e)(1), the possession limits specified in this paragraph (e)(2) will apply. A vessel not issued a Federal commercial Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit in accordance with § 648.4 that fished exclusively in state waters or a vessel that fished in Federal waters outside of the Atlantic Chub Mackerel Management Unit that is transiting the area with gear that is stowed and not available for immediate use is exempt from the possession limits specified in this paragraph (e)(2).

(i) When the Regional Administrator projects that 90 percent of the commercial Atlantic chub mackerel TAL has been landed, a vessel issued a commercial Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit may not fish for, possess, or land more than 40,000 lb (18.14 mt) of Atlantic chub mackerel at any time per trip in the EEZ portion of the Atlantic Chub Mackerel Management Unit.

(ii) When the Regional Administrator projects that 100 percent of the commercial Atlantic chub mackerel TAL has been landed, a vessel issued a commercial Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit fish for, possess, or land more than 10,000 lb (4.54 mt) of Atlantic chub mackerel at any time per trip in the EEZ portion of the Atlantic Chub Mackerel Management Unit.

■ 19. Amend § 648.80 by revising paragraph (b)(3)(i) and adding paragraph (c)(5)(iii) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(3) * * * (i) *Species exemption.* Unless otherwise restricted in § 648.86, owners and operators of vessels subject

to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (caught by trawl only), herring, Atlantic chub mackerel, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

* * * * *

(c) * * *

(5) * * *

(iii) *Atlantic chub mackerel fishery exemption.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (b)(2) and (c)(2) of this section may fish for, harvest, possess, or land Atlantic chub mackerel with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area when fishing in the MA Exemption Area defined in paragraph (c)(5)(i) of this section, provided such vessels comply with the following requirements:

(A) *Gear restrictions.* A vessel fishing for Atlantic chub mackerel within the MA Exemption Area must comply with the gear restrictions specified in § 648.23.

(B) *Possession limits.* A vessel fishing for Atlantic chub mackerel within the MA Exemption Area may fish for, possess on board, or land Atlantic chub mackerel, Atlantic mackerel, butterfish, *Illex* squid, and longfin squid up to the amount specified in § 648.26, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

■ 20. In part 648, revise the heading of subpart P to read as follows:

Subpart P—Mid-Atlantic Forage Species

■ 21. In § 648.350:

■ a. Revise the section heading; and

■ b. Reserve paragraph (b).

The revision reads as follows:

§ 648.350 Mid-Atlantic forage species landing limits.

* * * * *

■ 22. Amend § 648.351 by revising the section heading and paragraphs (a) through (c) to read as follows:

§ 648.351 Mid-Atlantic forage species possession limits.

(a) *Mid-Atlantic forage species.* Unless otherwise prohibited in § 648.80, a vessel issued a valid commercial permit in accordance with § 648.4 may fish for, possess, and land up to 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (b) of this section. A vessel not issued a permit in accordance with § 648.4 that is fishing exclusively in state waters is exempt from the possession limits specified in this section.

(b) *Mid-Atlantic Forage Species Management Unit.* The Mid-Atlantic Forage Species Management Unit is the area of the Atlantic Ocean that is bounded on the southeast by the outer limit of the U.S. EEZ; bounded on the south by 35°15.3′ N lat. (the approximate latitude of Cape Hatteras, NC); bounded on the west and north by the coastline of the United States; and bounded on the northeast by the following points, connected in the order listed by straight lines:

Point	Latitude	Longitude
1	40°59.32′ N	73°39.62′ W
2	40°59.02′ N	73°39.41′ W
3	40°57.05′ N	73°36.78′ W
4	40°57.87′ N	73°32.85′ W
5	40°59.78′ N	73°23.70′ W
6	41°1.57′ N	73°15.00′ W
7	41°3.40′ N	73°6.10′ W
8	41°4.65′ N	73°0.00′ W
9	41°6.67′ N	72°50.00′ W
10	41°8.69′ N	72°40.00′ W
11	41°10.79′ N	72°29.45′ W
12	41°12.22′ N	72°22.25′ W
13	41°13.57′ N	72°15.38′ W
14	41°14.94′ N	72°8.35′ W
15	41°15.52′ N	72°5.41′ W
16	41°17.43′ N	72°1.18′ W
17	41°18.62′ N	71°55.80′ W
18	41°18.27′ N	71°54.47′ W
19	41°10.31′ N	71°46.44′ W
20	41°2.35′ N	71°38.43′ W
21	40°54.37′ N	71°30.45′ W
22	40°46.39′ N	71°22.51′ W
23	40°38.39′ N	71°14.60′ W
24	40°30.39′ N	71°6.72′ W
25	40°22.38′ N	70°58.87′ W
26	40°14.36′ N	70°51.05′ W
27	40°6.33′ N	70°43.27′ W
28	39°58.29′ N	70°35.51′ W
29	39°50.24′ N	70°27.78′ W
30	39°42.18′ N	70°20.09′ W
31	39°34.11′ N	70°12.42′ W
32	39°26.04′ N	70°4.78′ W
33	39°17.96′ N	69°57.18′ W
34	39°9.86′ N	69°49.6′ W
35	39°1.77′ N	69°42.05′ W
36	38°53.66′ N	69°34.53′ W
37	38°45.54′ N	69°27.03′ W
38	38°37.42′ N	69°19.57′ W
39	38°29.29′ N	69°12.13′ W
40	38°21.15′ N	69°4.73′ W
41	38°13.00′ N	68°57.35′ W
42	38°4.84′ N	68°49.99′ W
43 *	38°2.21′ N	68°47.62′ W

* Point 43 falls on the U.S. EEZ.

(c) *Transiting.* Any vessel issued a valid permit in accordance with § 648.4 may transit the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (b) of this section, with an amount of Mid-Atlantic forage species on board that exceeds the possession limits specified in paragraph (a) of this section to land in a port in a state that is outside of the Mid-Atlantic Forage Species Management Unit, provided that those species were harvested outside of the Mid-Atlantic Forage Species Management Unit and that all gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

■ 23. In § 648.352, revise the section heading to read as follows:

§ 648.352 Mid-Atlantic forage species framework measures.

* * * * *

[FR Doc. 2020–15969 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 150
Tuesday, August 4, 2020

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1059; Product Identifier 2017–CE–035–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposal for certain Piper Aircraft, Inc. (Piper) Models PA–28–140, PA–28–150, PA–28–160, PA–28–180, PA–28–235, PA–32–260, and PA–32–300 airplanes. This action revises the notice of proposed rulemaking (NPRM) by including a revision to the manufacturer's service information, including an additional inspection method, and removing the requirement to install the access panel. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since the actions in the revised service information would impose an additional burden over those in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The comment period for the NPRM published in the **Federal Register** on November 7, 2017 (82 FR 51583), is reopened.

The FAA must receive comments on this SNPRM by September 18, 2020.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; internet: *www.piper.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1059; 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 SNPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aerospace Engineer, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5548; fax: (404) 474–5606; email: *william.mccully@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1059; Product Identifier 2017–CE–035–AD'' at the beginning of your comments. The FAA will consider all comments received by the closing date and may amend this proposed AD because of those comments.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments we receive, without change, to *https://regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact it receives about this proposed AD.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan McCully, Aerospace Engineer, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5548; fax: (404) 474–5606; email: *william.mccully@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Piper Models PA–28–140, PA–28–150, PA–28–160, PA–28–180, PA–28–235, PA–32–260, and PA–32–300 airplanes. The NPRM was published in the **Federal Register** on November 7, 2017 (82 FR 51583). The NPRM was prompted by reports of significant corrosion found in an area of the main wing spar not easily accessible for inspection. The NPRM proposed to require installing inspection access panels in the lower wing skin near the left and the right main wing spars (if not already there), inspecting for corrosion,

and taking all necessary corrective actions if corrosion is found.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, Piper revised its service information to add a minimum thickness dimension for the top inboard wing skin and to include procedures for reapplying corrosion preventive compound if removed during the inspection. The FAA is incorporating these revised procedures into the proposed AD. Also, at the request of some commenters, the FAA has replaced the proposed requirement to install access panels for the visual inspection with optional access methods: The use of existing access panels, installation of access panels, accessing the area during a concurrent inspection, or using a borescope through existing holes or openings.

Comments

The FAA gave the public the opportunity to comment on the NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Requests Regarding the FAA's Justification of the Unsafe Condition

The Airline Owners and Pilots Association (AOPA) and five individual commenters requested that the FAA provide more information about the events surrounding the two damaged airplanes that prompted this proposed AD. Specifically, the commenters asked about the history, climate, storage, location, and operating conditions of the two damaged airplanes. AOPA further requested that the FAA publish its Small Airplane Risk Assessment (SARA) of the unsafe condition.

Four commenters requested that the NPRM be withdrawn as not warranted or not justified as an unsafe condition.

The FAA agrees to provide additional information about the events that prompted the NPRM. One of the subject airplanes is a Model PA–28–140 registered in Chile, on which severe corrosion of the left-hand main spar assembly was discovered during maintenance to add a wing inspection panel. Corrosion damage of a similar extent was found in the same location on a Model PA–28–161 registered in Scotland. The Model PA–28–161 airplane had inspection access panels installed, but the airplane had not been properly inspected. As FAA regulations do not require owners to maintain records of an airplane's operating history, the information requested by the commenters about the climate, storage, and operating conditions of these airplanes is unknown.

The corrosion observed on the subject wing spars penetrated through more than 25 percent of the cross sectional area, to the extent that failure was imminent, and therefore qualified as a Primary Structure Hazard Level 5 under the FAA's SARA process. A subsequent Corrective Action Review Board determined that the similarity, extent, and location of the corrosion in the subject airplanes poses a safety concern requiring corrective action for airplanes with wings of a similar design. The airplanes listed in the applicability of the proposed AD have wings with the same cross sectional member, shape, and material, and thus are subject to this same unsafe condition. The FAA limited applicability to models of an older design that did not include wing inspection access panels because of the likelihood that corrosion has been overlooked. The FAA has not changed this proposed AD based on these comments.

Request To Allow Borescope Inspection Instead of Installation of Access Panels

Over thirty commenters requested the proposed AD allow a borescope inspection method instead of installing access panels in the wing skin.

The commenters stated that the borescope inspection method is a more cost-effective and less invasive option than the purchase and installation of the Piper access panel kit. The borescope inspection method also mitigates damage risk to the airplane structure associated with cutting the wing skin to install the Piper kit. Several commenters requested the proposed AD require installing smaller inspection holes to facilitate a borescope inspection. Other commenters stated, in some cases, existing access points such as inspection panels, removeable fairings, and lightening holes provided adequate access to conduct a borescope inspection.

The FAA agrees with allowing a borescope inspection method instead of requiring the installation of access panels in the wing skin. This SNPRM removes the proposed requirement to install the access panels. Due to the many variations and types of inspection openings possible on different model airplanes, it is not feasible for the FAA to specify access options for each particular airplane. As a result, the FAA has not changed the proposed AD to require smaller inspection holes. Instead, the SNPRM proposes four options for gaining access to the inspection area, including using a borescope through existing access points.

Request To Access Inspection Area During Wing Tank Removal

Six commenters requested the proposed AD allow access to the inspection area by removing the wing tank.

The FAA agrees and has changed this proposed AD to allow inspection during concurrent maintenance, such as when the wing tank has been removed, as an option for gaining access to the inspection area.

Request for a Definitive Corrosion Removal Parameter

William Goebel and Robert Nelson requested the FAA remove the requirement to inspect for ''any evidence of corrosion'' and instead provide criteria or a quantifiable measurement of unacceptable corrosion. The commenters stated that the wording in the NPRM is vague and will unnecessarily require corrective action and subsequent material thickness measurements for minor surface corrosion

The FAA disagrees. Even with minor corrosion removal, the thickness of the affected structure must be verified for remaining strength. The criteria in the service information for determining the minimum acceptable thickness of the wing components are based on actual remaining strength computations for each component of the wing structure. While some elements of the spar can sustain liberal material removal and retain adequate strength without additional reinforcement, other elements can sustain little or no reduction in thickness before strength is compromised and repair is required. The FAA has not changed the corrective action requirements for corrosion based on these comments.

Request for Clarification of the Required Inspection Area

Andrew Durbin and Michael Dieck requested the FAA clarify the areas to be inspected, as the instructions in Piper Service Bulletin No. 1304, dated August 23, 2017, are vague and contradictory and contain errors.

The FAA agrees that the inspection area described in Piper Service Bulletin No. 1304, dated August 23, 2017, is open to misinterpretation. The FAA has changed the proposed AD to include specific inspection areas.

Request Local Fabrication of the Inspection Access Panels

Donald Morris and Raymond Stone requested that the proposed AD allow

local fabrication of the inspection panels as an alternative to purchasing the specified kit from Piper. One of these commenters requested the AD include the materials and dimensions of the parts in the kit so mechanics can fabricate these parts. The commenters stated the inspection access panels require no special tooling or methods to fabricate and are within the capability of most mechanics, and local fabrication could save time and money for owners. Robert Nelson agreed it should not be necessary to purchase the parts from Piper.

The FAA partially agrees. The FAA has changed the proposed AD to remove the requirement to install access panels. Instead, this SNPRM proposes to allow other methods of accessing the inspection area. Because the proposed AD no longer requires installation of the Piper kit, the commenters' request is no longer necessary.

Request for Exemption From Compliance

Kenneth Vida asked whether the proposed AD would apply to their airplane. The commenter stated that the wings of the PA–28–180C were removed and no corrosion found on the wing spars or the pocket in the airframe. The wings were reinstalled in the summer of 2016 and the airplanes resumed operating in April of 2017. The FAA infers that the commenter is requesting credit for a prior maintenance event. Ross Tracey requested that airplanes that have been inspected as specified in Piper SB No. 1006 within the last two years be exempt from the proposed AD.

The FAA disagrees. Piper SB No. 1006 specifies inspecting the spar structure ''behind the fuel tank,'' which is outboard of the inspection area in the proposed AD. Accomplishment of SB No. 1006 alone would not satisfy compliance with the proposed AD.

The FAA has revised the proposed AD to allow credit for prior inspections performed in accordance with Piper Service Bulletin No. 1304, dated August 23, 2017, under certain conditions. For operators who seek credit for other methods, under the provisions of paragraph (j) of this AD, the FAA will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data is submitted to substantiate that the method provides an acceptable level of safety.

Request To Update the Costs of Compliance

Five commenters, including AOPA, requested the FAA update the cost of complying with the proposed AD. These commenters stated that pricing for the Piper kit of $175 in the Cost of Compliance section is too low. One of these commenters requested that the cost estimate include the cost of applying a protective coating to the inspection panels to match the airplane's existing exterior coating.

The FAA partially agrees. This SNPRM updates the cost of the access panel kit, which is now proposed as an optional installation and not a required installation. The cost analysis in AD rulemaking actions typically includes only the costs associated with complying with the AD. Accordingly, the FAA is not including the cost of applying a matching protective coating because that activity is not required to comply with any portion of the proposed AD.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Piper Service Bulletin No. 1304A, dated August 14, 2018. The service bulletin contains procedures for installing an inspection access panel in the lower wing skin near the left and the right main wing spars, if not already there, inspecting for corrosion, and, if corrosion is found, taking all necessary corrective actions. The service bulletin also contains procedures for applying corrosion prevention and for verifying that the top inboard wing skin thickness meets or exceeds the minimum thickness after corrosion is removed. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is proposing this AD because it evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM. As a result, the FAA determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require inspecting the left and right main wing spar for corrosion, and, if corrosion is found, taking all necessary corrective actions.

Differences Between This SNPRM and the Service Information

Piper SB No. 1304A, dated August 14, 2018, provides the manufacturer's procedures for installing access panels on the lower skin of the left wing and the right wing for easier access to the left and right main wing spar. This SNPRM does not propose a requirement to install the access panels but would allow the installation as an option to access the inspection area.

Costs of Compliance

The FAA estimates that this SNPRM would affect 11,476 airplanes of U.S. registry.

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

INSPECTION COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Main wing spar inspection	2 work-hours × $85 per hour = $170 to inspect both wings.	Not Applicable ..	$170 per inspection cycle	$1,950,920 per inspection cycle.

INSTALLATION OF ACCESS PANELS

Optional action	Labor cost	Parts cost	Cost per product
Install inspection access panel in the lower wing skin near the left and the right main wing spars.	6 work-hours × $85 per hour = $510 to install the inspection access panel on both wings.	$220 for the kit that contains provisions for installing inspections access panels on both wings.	$730

This proposed AD does not require the installation of the access panels for the visual inspection; however, it allows the installation of the panels, as one of four options, to access the inspection area.

On-Condition Costs

The extent of damage found during the required inspection could vary significantly from airplane to airplane. The FAA has no way of determining how much damage may be found on each airplane, the cost to repair damaged parts on each airplane, or the number of airplanes that may require repair.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Piper Aircraft, Inc.: Docket No. FAA–2017–1059; Product Identifier 2017–CE–035–AD.

(a) Comments Due Date

The FAA must receive comments by September 18, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Piper Aircraft, Inc. model airplanes that are certificated in any category:

TABLE 1 TO PARAGRAPH (c) OF THIS AD—AFFECTED MODELS AND SERIAL NUMBERS

Model	Serial numbers
PA–28–140	28–20001 through 28–26946, and 28–7125001 through 28–7725290.
PA–28–150 and PA–28–160	28–1 through 28–4377, and 28–1760A.
PA–28–180	28–671 through 28–5859, 28–7105001 through 28–7205318, and 28–7305001 through 28–7505261.
PA–28–235	28–10001 through 28–11378, 28–7110001 through 28–7710089, and 28E–11.
PA–32–260	32–04, 32–1 through 32–1297, and 32–7100001 through 32–7800008.
PA–32–300	32–15, 32–21, 32–40000 through 32–40974, and 32–7140001 through 32–7840222.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5711, Wing Spar.

(e) Unsafe Condition

This AD was prompted by reports of corrosion found in an area of the main wing spar not easily accessible for inspection. The FAA is issuing this AD to detect and correct corrosion in the wing root area of the left and the right main wing spars. The unsafe condition, if not detected and corrected, could cause the main wing spar to fail, which could result in loss of airplane control.

(f) Compliance

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

(g) Inspect the Left and Right Main Wing Spars for Corrosion

Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 7 years, inspect the forward and aft surfaces of the left and right main wing spars between wing station (WS) 24.24 and WS 49.25 for corrosion as follows.

(1) Gain visual access to the inspection area by complying with either paragraph (g)(1)(i), (ii), (iii), or (iv) of this AD.

Note 1 to paragraph (g)(1) of this AD: Step 1 and figure 1 in Part I Wing Spar Inspection of Piper Aircraft, Inc. Service Bulletin No. 1304A, August 14, 2018 (Piper SB No. 1304A), contain instructions you may use for identifying the inspection area and determining if wing access panels have been installed.

(i) Remove existing wing inspection access panels and fairings.

(ii) Install Inspection Access Hole Kit part number 765–106V, and then remove the wing inspection access panels and fairings.

(iii) Access the inspection area during concurrent maintenance such as a wing tank removal, wing removal, or wing skin repair.

(iv) Use a lighted borescope capable of 10X or higher power magnification display through existing access points (*e.g.,* wing root fairing, landing gear panels, internal lightening holes, or other access points depending on model).

(2) Identify the wing spar configuration for your airplane and clean the inspection area in accordance with step 3, table 1, and figure 2 (sheets 1 and 2) in Part I Wing Spar Inspection of Piper SB No. 1304A. Visually inspect each spar component for evidence of corrosion, including irregularities such as blisters, flakes, chips, lumps, bulging skin, and missing rivets.

Note 2 to paragraph (g)(2) of this AD: Paint coatings may mask the initial stages of corrosion, and faying surfaces, such as riveted lap joints, may hide corrosion.

(h) Corrective Actions

(1) If any evidence of corrosion is found during any inspection required by paragraph (g) of this AD, before further flight, remove the corrosion and determine whether the thickness of the component meets or exceeds the minimum thickness at all locations in accordance with table 2 and step 5 in Part I Wing Spar Inspection of Piper SB No. 1304A.

(2) If corrosion preventative compound was removed as part of any inspection required by paragraph (g) of this AD, before further flight, apply corrosion preventative compound by following step 1 in Part III Return to Service of Piper SB No. 1304A.

(i) Credit for Actions Done Following Previous Service Information

This paragraph provides credit for the initial inspection and application of corrosion preventative compound required by paragraphs (g) and (h)(2) of this AD if you performed the inspection before the effective date of this AD using Piper Aircraft, Inc. Service Bulletin No. 1304, dated August 23, 2017, and no evidence of corrosion was found.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(3)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Dan McCully, Aerospace Engineer, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5548; fax: (404) 474–5606; email: *william.mccully@faa.gov.*

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; internet: *www.piper.com.* You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on July 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16225 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0681; Product Identifier 2020–NM–089–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by a report that during the assembly of a certain section of the fuselage, the gaps found on self-aligning nuts for eight fasteners were out of tolerance. This proposed AD would require a rotating probe test of all fastener holes located in the affected area for any discrepancies, an eddy current inspection of the surrounding flange for any discrepancies, a detailed inspection of certain frames for any discrepancies, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 18, 2020.

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 material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0681.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0681; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *Kathleen.Arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No.

FAA–2020–0681; Product Identifier 2020–NM–089–AD'' at the beginning of your 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 the FAA receives, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0109, dated May 15, 2020 (''EASA AD 2020–0109'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes.

This proposed AD was prompted by a report that during the assembly of the section 19 skin to frame (FR) 98 joint of the fuselage, the gaps found on self-aligning nuts for eight fasteners were out of tolerance. The FAA is proposing this AD to address gaps that are out of tolerance, which could reduce the fatigue and damage tolerance properties of the affected area, and possibly affect the structural integrity of the rear cone of the fuselage. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0109 describes procedures for a rotating probe test of all fastener holes located in the affected area for any discrepancies (*i.e.,* cracking or damage), an eddy current inspection of the surrounding flange for any discrepancies, a detailed inspection of frames FR 97 to FR 99 for any discrepancies and corrective actions if necessary. Corrective actions include replacing all fasteners located in the affected area with new bolts and self-aligning nuts, and repair.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0109 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0109 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0109 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0109 that is required for compliance with EASA AD 2020–0109 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0681 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$1,105

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
6 work-hours × $85 per hour = $510	$70	$580

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2020–0681; Product Identifier 2020–NM–089–AD.

(a) Comments Due Date

The FAA must receive comments by September 18, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0109, dated May 15, 2020 (''EASA AD 2020–0109'').

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that during the assembly of the section 19 skin to frame (FR) 98 joint of the fuselage, the gaps found on self-aligning nuts for eight fasteners were out of tolerance. The FAA is issuing this AD to address gaps that are out of tolerance, which could reduce the fatigue and damage tolerance properties of the affected area, and possibly affect the structural integrity of the rear cone of the fuselage.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0109.

(h) Exceptions to EASA AD 2020–0109

(1) The ''Remarks'' section of EASA AD 2020–0109 does not apply to this AD.

(2) Where paragraph (2) of EASA AD 2020–0109 specifies actions if ''any discrepancy is detected, as defined in the SB,'' for this AD a discrepancy is defined as any crack or damage.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC*): For any service information referenced in EASA AD 2020–0109 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2020–0109, contact the EASA, Konrad-Adenauer-

Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0681.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *Kathleen.Arrigotti@faa.gov.*

Issued on July 29, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–16843 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0178; EPA–R01–OAR–2017–0344; FRL–10012–69–Region 1]

Air Plan Approval; New Hampshire; Infrastructure State Implementation Plan Requirements for the 2015 Ozone and 2012 $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This proposed action includes all elements of these infrastructure requirements except for the ''Good Neighbor'' or ''transport'' provisions, which will be addressed in a future action. We are also proposing to grant the state an exemption from the infrastructure SIP contingency plan obligation for ozone, and to conditionally approve several elements of New Hampshire's submittal relating to air-quality modeling requirements. In addition, we are proposing to correct errors in our previous approval of an infrastructure SIP submission from New Hampshire for the 2012 $PM_{2.5}$ NAAQS and to conditionally approve several elements of that submittal.

The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before September 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0178 at *https://www.regulations.gov,* or via email to *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109—3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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III. Proposed Action.

IV. Statutory and Executive Order Reviews.

I. Background and Purpose

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] On September 5, 2018, the New Hampshire Department of Environmental Services (NHDES) submitted a revision to its State Implementation Plan (SIP). The

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs, and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

SIP revision addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS.

A. What is the scope of this rulemaking?

EPA is acting on the New Hampshire SIP submission on the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS, except the transport provisions, which will be addressed in a future action. We are also proposing to correct errors in our previous approval of an infrastructure SIP submission from New Hampshire for the 2012 $PM_{2.5}$ NAAQS and to conditionally approve several elements of that submittal, as explained in our discussion of CAA section 110(a)(2)(K) below.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[3] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[4] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

B. What guidance is EPA using to evaluate New Hampshire's infrastructure SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 memorandum). EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 memorandum).

II. EPA's Evaluation of New Hampshire's Infrastructure SIP for the 2015 Ozone Standard

In New Hampshire's submission, a detailed list of New Hampshire Laws and previously SIP-approved Air Quality Regulations show precisely how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2015 ozone NAAQS. The following review evaluates the state's submission in light of section 110(a)(2) requirements and relevant EPA guidance. For the state's September 5, 2018, infrastructure SIP submission, we provide an evaluation of the applicable Section 110(a)(2) elements, excluding the transport provisions.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[5] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

In its September 2018 submittal for the 2015 ozone NAAQS, New Hampshire cites a number of state laws and regulations in satisfaction of element A. The infrastructure SIP cites New Hampshire's Revised Statutes Annotated (RSA) at Chapter 21–O, which established the NHDES, and RSA Chapter 125–C, which gives the Commissioner of NHDES the authority to develop rules and regulations necessary to meet state and federal ambient air quality standards.

In satisfaction of element A, NHDES also cites 10 state regulations that it has adopted to control emissions related to ozone and the ozone precursors, nitrogen oxides (NO_X) and volatile organic compounds (VOCs). Some of these, with their EPA approval citation,[6] are listed here: Chapter Env-A 1200 ''Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT)'' (81 FR 53926; August 15, 2016); Chapter Env-A 1300 ''Nitrogen Oxides (NO_X) RACT'' (79 FR 49458; August, 21, 2014); Chapter Env-A 2300 ''Mitigation of Regional Haze'' (81 FR 70360; October 12, 2016); and Chapter Env-A 3200 ''NO_X Budget Trading Program'' (65 FR 68078; November 14, 2000).

EPA proposes that New Hampshire meets the infrastructure requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and to make these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

NHDES continues to operate a monitoring network, and EPA approved the state's 2019/2020 Annual Network Review and Plan on August 15, 2019.[7] Furthermore, NHDES populates EPA's Air Quality System (AQS) with air quality monitoring data in a timely manner, and provides EPA with prior

[3] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on New Hampshire's infrastructure SIP to address the 2008 Ozone NAAQS. *See* 80 FR 42446 (July 17, 2015).

[4] *See Montana Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

[5] See, for example, EPA's final rule on ''National Ambient Air Quality Standards for Lead,'' 73 FR 66964, 67034 (November 12, 2008).

[6] The citations reference the most recent EPA approval of the stated rule or of revisions to the rule.

[7] EPA's approval letter is included in the docket for this action.

notification when considering a change to its monitoring network or plan.

Under element B of its September 5, 2018, infrastructure SIP submittal for the 2015 ozone NAAQS, NHDES cites RSA Chapter 125–C:6 III, IV and XVI, which grants the Commissioner ''the power and duty to conduct studies related to air quality, to disseminate the results, and to assure the reliability and accuracy of monitoring equipment to meet federal EPA standards.'' EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and for the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

Sub-Element 1: Enforcement of SIP Measures

NHDES staffs and implements an enforcement program pursuant to RSA Chapter 125–C, Air Pollution Control, of the New Hampshire Statutes. Specifically, RSA Chapter 125–C:15, Enforcement, authorizes the Commissioner of the NHDES or the authorized representative of the Commissioner, upon finding a violation of Chapter 125–C has occurred, to issue a notice of violation or an order of abatement, and to include within it a schedule for compliance. Additionally, RSA 125–C:15 I–b, II, III, and IV provide for penalties for violations of Chapter 125–C.

EPA proposes that New Hampshire has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

Sub-Element 2: PSD Program for Major Sources and Major Modifications

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. EPA interprets the CAA as requiring each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program in place satisfying the current requirements for all regulated NSR pollutants. New Hampshire's EPA-approved PSD rules, contained at Part Env-A 619, contain provisions that address applicable requirements for all regulated NSR pollutants, including greenhouse gases (GHGs).

New Hampshire implements the PSD program by, for the most part, incorporating by reference the federal PSD program at 40 CFR 52.21, as it existed on a specific date. The state periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. As a result, the SIP revisions generally reflect changes to PSD requirements that the EPA has promulgated prior to the revised date of incorporation by reference. To address the 2008 NSR Rule and the 2010 NSR Rule, New Hampshire submitted revisions to its PSD regulations on November 15, 2012, that incorporated by reference the federal PSD program codified in the July 1, 2011, edition of 40 CFR 52.21. On September 25, 2015, EPA approved these revisions into the SIP as incorporating the necessary changes obligated by the 2008 NSR Rule and the 2010 NSR Rule. *See* 80 FR 57722. On May 25, 2017, EPA approved additional updates to NHDES's PSD program. *See* 82 FR 24057.

New Hampshire's revisions submitted on November 15, 2012, also satisfy the requirements of EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) published on November 29, 2005. *See* 70 FR 71612. Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone. *See id.* at 71699–700. The required revisions to the federal PSD program are codified in 40 CFR 51.166(b) and (i) and in 40 CFR 52.21(b) and (i). By incorporating the Federal provisions at 40 CFR 52.21(b) and (i) as of July 1, 2011, the New Hampshire's November 15, 2012, submittal also included the revisions made to the PSD program by the Phase 2 Rule in 2005 regarding NO_X as a precursor to ozone. *See* Part Env-A 619.03(a). Thus, New Hampshire's PSD program is consistent with the requirements of the Phase 2 Rule.

EPA proposes that New Hampshire has a comprehensive PSD permitting program in place satisfying the PSD sub-element of 110(a)(2)(C), with one exception. EPA's PSD regulations at 40 CFR 51.166(*l*) require a State's SIP to ''provide for procedures which specify that [a]ll applications of air quality modeling . . . shall be based on the applicable models, data bases, and other requirements specified in'' EPA's Guideline on Air Quality Models in appendix W of 40 CFR part 51, which was most recently revised on January 17, 2017. 82 FR 5182; *see also* 82 FR 14324 (Mar. 20, 2017). As explained in our evaluation of section 110(a)(2)(K) requirements later in this notice, New Hampshire's SIP currently references an earlier version of appendix W that has since been superseded by the January 17, 2017, revisions. *See* Part Env-A 619.03(a), *PSD Program Requirements.* Therefore, New Hampshire's SIP must be updated to refer to an edition of EPA's regulations that incorporates the January 17, 2017, revisions to appendix W.

As noted under section 110(a)(2)(K), NHDES committed in a letter dated June 3, 2020, to pursuing revisions to Part Env-A 619.03 to update the reference to 40 CFR 52.21 so as to incorporate EPA's current ''Guideline on Air Quality Models'' in appendix W to 40 CFR part 51, and to submitting these revisions to EPA within one year of our final approval of today's proposed action. Because the EPA Administrator's approved modeling requirements are found in appendix W, this revision would satisfy the section 51.166(*l*) requirement that the SIP provide for procedures that specify that all applications of modeling be based on the requirements in appendix W. Consequently, we are proposing to conditionally approve New Hampshire's submittal for the PSD sub-element of section 110(a)(2)(C) for the 2015 ozone NAAQS.

We are also proposing to correct our December 4, 2018, final action on New Hampshire's infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS, which was submitted to EPA on December 22,

2015. *See* 83 FR 62464. That correction entails replacing our previous full approval for this PSD sub-element with a conditional approval based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03 needed to fully approve this infrastructure sub-element. This correction is explained in more detail in the discussion of section 110(a)(2)(K) below.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants.

EPA approved New Hampshire's minor NSR program on September 22, 1980 (45 FR 62814), and approved updates to the program on August 14, 1992 (57 FR 36606). New Hampshire and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 or 2015 ozone NAAQS.

We are proposing to find that New Hampshire has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2015 ozone NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), also known as the ''good neighbor'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution.

In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. EPA commonly refers to these requirements as Prong 1 (significant contribution to nonattainment) and Prong 2 (interference with maintenance). A state's SIP submission for Prongs 1 and 2 is also referred to as a state's ''Transport SIP.'' In today's action, EPA is not evaluating New Hampshire's Transport SIP (*i.e.,* Prongs 1 and 2; combined as (D)1 in Table 1 below). EPA will address New Hampshire's Transport SIP for the 2015 ozone NAAQS in a future action.

Today's action, however, does address Section 110(a)(2)(D)(i)(II), which require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C of the Act to prevent significant deterioration of air quality and to protect visibility. EPA commonly refers to these requirements as Prong 3 (Prevention of Significant Deterioration) and Prong 4 (Visibility Protection). Today's action also addresses Section 110(a)(2)(D)(ii) of the Act, which requires SIPs to contain provisions to ensure compliance with sections 126 and 115 of the Act relating to interstate and international pollution abatement, respectively.

Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. As explained in the 2013 memorandum,[8] a state may meet this requirement with respect to in-state sources and pollutants that are subject to PSD permitting through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. EPA discussed New Hampshire's PSD permitting program above under Section 110(a)(2)(C).

For in-state sources not subject to PSD, this requirement can be satisfied through a fully approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA approved New Hampshire's NNSR regulations on July 27, 2001, and updates to these regulations on May 25, 2017. See 66 FR 39104 and 82 FR 24057, respectively. These NNSR regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51.

As discussed above under Section 110(a)(2)(C), New Hampshire's PSD program fully satisfies the requirements of EPA's PSD implementation rules, with one exception related to air quality models. However, as also noted under Section 110(a)(2)(C), New Hampshire has committed to pursuing revisions to Part Env-A 619.03, *PSD Program Requirements,* to update the reference to 40 CFR 52.21 so as to incorporate EPA's current ''Guideline on Air Quality Models'' in appendix W to 40 CFR part 51, and to submitting these revisions to EPA within one year of our final approval of today's proposed action. Therefore, EPA proposes to conditionally approve New Hampshire's submittal for the PSD requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

We are also proposing to correct our December 4, 2018, final action on New Hampshire's infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS, which was submitted to EPA on December 22, 2015. *See* 83 FR 62464. That correction entails replacing our previous full approval for this PSD sub-element of 110(a)(2)(D)(i)(II) with a conditional approval based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03 needed to fully approve this infrastructure sub-element. This correction is explained in more detail in the discussion of section 110(a)(2)(K) below.

Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

With regard to applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 memorandum, 2011 memorandum, and 2013 memorandum recommend that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.[9]

A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will include all measures needed to achieve the state's apportionment of emission reduction obligations agreed upon through a regional planning process and will therefore ensure that emissions from sources under the air agency's jurisdiction are not interfering with measures required to be included

[8] Included in the docket for today's action.

[9] All referenced memoranda are included in the docket for today's action.

in other air agencies' plans to protect visibility.

New Hampshire's Regional Haze SIP was approved by EPA on August 22, 2012. *See* 77 FR 50602. Accordingly, EPA proposes that New Hampshire meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

This sub-element requires that each SIP contain provisions requiring compliance with requirements of CAA section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

On May 25, 2017, EPA approved into the New Hampshire SIP revisions to the state's PSD program that require the NHDES to provide notice of a draft PSD permit to, among other entities, any state whose lands may be affected by emissions from the source. *See* Parts Env-A 621.03, .04(e)(3); 82 FR 24057 at 24060; *see also* Part Env-A 619.07(d). These public notice requirements are consistent with the Federal SIP-approved PSD program's public notice requirements for affected states under 40 CFR 51.166(q). Therefore, we propose to approve New Hampshire's compliance with the infrastructure SIP requirements of CAA section 126(a) for the 2015 ozone NAAQS. New Hampshire has no obligations under any other provision of CAA section 126, and no source or sources within the state are the subject of an active finding under section 126 with respect to the 2015 ozone NAAQS.

Section 110(a)(2)(D)(ii)—International Pollution Abatement

This sub-element also requires each SIP to contain provisions requiring compliance with the applicable requirements of CAA section 115 relating to international pollution abatement. Section 115 authorizes the Administrator to require a state to revise its SIP to alleviate international transport into another country where the Administrator has made a finding with respect to emissions of a NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 against New Hampshire with respect to the 2015 ozone NAAQS. Therefore, EPA is proposing that New Hampshire has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to CAA section 115 for the 2015 ozone NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

Section 110(a)(2)(E)(i) requires each SIP to provide assurances that the state will have adequate personnel, funding, and legal authority under state law to carry out its SIP. In addition, section 110(a)(2)(E)(ii) requires each state to comply with the requirements for state boards in CAA section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring implementation of SIP obligations with respect to relevant NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because New Hampshire does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

New Hampshire, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. New Hampshire RSA 125–C:6, ''Powers and Duties of the Commissioner,'' authorizes the Commissioner of the NHDES to enforce the state's air laws, establish a permit program, accept and administer grants, and exercise incidental powers necessary to carry out the law. Additionally, RSA–125–C:12, ''Administrative Requirements,'' authorizes the Commissioner to collect fees to recover the costs of reviewing and acting upon permit applications and enforcing the terms of permits issued. The New Hampshire SIP, as originally submitted on January 27, 1972, and subsequently amended, provides additional descriptions of the organizations, staffing, funding and physical resources necessary to carry out the plan.

EPA proposes that New Hampshire meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) for the 2015 ozone NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. Section 128 further provides that a state may adopt more stringent conflicts of interest requirements and requires EPA to approve any such requirements submitted as part of a SIP.

New Hampshire RSA 21–O:11, ''Air Resources Council,'' established the New Hampshire Air Resources Council, a state board that hears all administrative appeals from department enforcement and permitting decisions. The Council consists of 11 members, 6 of whom ''shall represent the public interest.'' RSA 21–O:11, I. Those representing the public interest ''may not derive any significant portion of their income from persons subject to permits or enforcement orders, and may not serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders.'' *Id.* The statute further provides that ''[a]ll potential conflicts of interest shall be adequately disclosed.'' *Id.* On December 16, 2015, EPA approved RSA 21–O:11 for incorporation into the New Hampshire SIP as satisfying the requirements of section 128. *See* 80 FR 78135. Additional details are provided in our July 17, 2015 proposal notification. *See* 80 FR 42446.

EPA proposes that New Hampshire meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) for the 2015 ozone NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such

sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

New Hampshire Statute Title X, Chapter 125–C:6, ''Powers and Duties of the Commissioner,'' authorizes the Commissioner of NHDES to require the installation, maintenance, and use of emissions monitoring devices and to require periodic reporting to the Commissioner of the nature and extent of the emissions. This authority also enables the Commissioner to correlate this information to any applicable emissions standard and to make such information available to the public.

NHDES implements Chapter Env-A 800, ''Testing and Monitoring Procedures,'' and Chapter Env-A 900, ''Owner or Operator Recordkeeping and Reporting Obligations,'' as the primary means of fulfilling these obligations. New Hampshire's Chapters Env-A 800 and 900 have been approved into the SIP (*See* 77 FR 66388; November 5, 2012). Additionally, under RSA 125–C:6, VII, and Part Env-A 103.04, emissions data are not considered confidential information. EPA recognizes that New Hampshire routinely collects information on air emissions from its industrial sources and makes this information available to the public. New Hampshire states in its submittal that it does not have any provisions that would prevent the use of valid emissions data.

Therefore, EPA proposes that New Hampshire meets the infrastructure SIP requirements of section 110(a)(2)(F) for the 2015 ozone NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for state authority analogous to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' Section 303 further authorizes the Administrator to issue ''such orders as may be necessary to protect public health or welfare or the environment'' in the event that ''it is not practicable to assure prompt protection . . . by commencement of such civil action.''

We propose to find that New Hampshire's submittal and certain state statutes provide for authority comparable to that in section 303. New Hampshire's submittal specifies that RSA 125–C:9, ''Authority of the Commissioner in Cases of Emergency,'' authorizes the Commissioner of NHDES, with the consent of the Governor and Air Resources Council, to issue an order requiring actions to be taken as the Commissioner deems necessary to address an air pollution emergency. Such orders are effective immediately upon issuance. *Id.* We note also that RSA 125–C:15, I, provides that, ''[u]pon a finding by the commissioner that there is an imminent and substantial endangerment to the public health or welfare or the environment, the commissioner shall issue an order of abatement requiring immediate compliance and said order shall be final and enforceable upon issuance, but may be appealed to the council within 30 days of its issuance, and the council may, after hearing, uphold, modify, or abrogate said order.'' With regard to the authority to bring suit, RSA 125–C:15, II, further provides that violation of such an order ''shall be subject to enforcement by injunction, including mandatory injunction, issued by the superior court upon application of the attorney general.''

Section 110(a)(2)(G) also requires that New Hampshire have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II for certain pollutants. *See* 40 CFR 51.150, 51.152(c). Contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (''Prevention of Air Pollution Emergency Episodes'') for the relevant NAAQS, if the NAAQS is covered by those regulations. A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *See* 40 CFR part 51 subpart H.

Classifications for all pollutants for AQCRs in New Hampshire can be found at 40 CFR 52.1521.[10] For ozone, New Hampshire has two AQCRs (Androscoggin Valley Interstate and Central New Hampshire Intrastate) that are classified as Priority III, and one AQCR (Merrimack Valley—Southern New Hampshire Interstate) that is classified as Priority I.

Although a Priority I classification triggers the contingency plan obligation requirement of 40 CFR 51.151, New Hampshire previously requested, pursuant to 40 CFR 51.152(d)(1), an exemption from the contingency plan obligation for the 2008 ozone standard for the Priority I Merrimack Valley—Southern New Hampshire Interstate AQCR because the state is designated as unclassifiable/attainment for that standard. EPA granted this request on December 16, 2015. *See* 80 FR 78135. In its September 5, 2018, infrastructure SIP submission, New Hampshire requested an exemption from the contingency plan obligation for this AQCR for the 2015 ozone standard because it is also classified as unclassifiable/attainment for this standard. Therefore, we are proposing to grant this request for an exemption. New Hampshire also provided data from eight monitoring sites within this AQCR for the years 2013 to 2017, which indicate that ozone levels during this timeframe are well below the significant harm level for ozone of 0.6 parts per million (ppm) on a 2-hour average. *See* 40 CFR 51.151. In addition, since 2017, all monitors in the state have continued to remain well below the significant harm level for ozone.[11] These data are also below the 0.1 ppm 1-hour maximum established by regulation for classifying an area as Priority I. *See id.* 51.150.

Furthermore, New Hampshire has broad statutory authority (*see* RSA 125–C:9, Authority of the Commissioner in Cases of Emergency) to address activities causing imminent and substantial endangerment to public health. However, New Hampshire does not have regulations that specifically address all the 40 CFR part 51 subpart H requirements. New Hampshire does, however, as a matter of practice, post on the internet daily forecasted ozone levels through the EPA AIRNOW and EPA ENVIROFLASH systems. Information regarding these two systems is available on EPA's website at *www.airnow.gov.* Notices are sent out to ENVIROFLASH participants when levels are forecast to exceed the current 8-hour ozone standard. In addition, when levels are expected to exceed the ozone standard in New Hampshire, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and

[10] Classification of regions in New Hampshire is available at *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5c6639933ef9479b11c7179568ef4b05&mc=true&r=PART&n=pt40.4.52#se40.4.52_11521* and ozone monitor values for individual monitoring sites throughout New Hampshire are available at *www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

[11] New Hampshire's 24-hour and annual ozone monitor values for individual monitoring sites are available at *https://www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

communication requirements of 40 CFR 51.152.

EPA proposes that New Hampshire meets the applicable infrastructure SIP requirements for section 110(a)(2)(G), including contingency-plan requirements, for the 2015 ozone NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever EPA finds that the SIP is substantially inadequate.

New Hampshire's infrastructure submittal references New Hampshire RSA 125–C:6, ''Powers and Duties of the Commissioner,'' which provides that the Commissioner of NHDES may develop a comprehensive program and provide services for the study, prevention, and abatement of air pollution. Additionally, Chapter Env-A 200, ''Procedural Rules,'' which was approved into the New Hampshire SIP on October 28, 2002 (67 FR 65710), provides for public hearings for SIP revision requests prior to their submittal to EPA. Therefore, EPA proposes that New Hampshire meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

Section 110(a)(2)(I) provides that each plan or plan revision for an area designated as a nonattainment area shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions for designated nonattainment areas, as required under part D, are subject to a different submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following area designations for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

Section 110(a)(2)(J) of the CAA requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).'' The evaluation of the submission from New Hampshire with respect to these requirements is described below.

Sub-Element 1: Consultation With Government Officials

Pursuant to CAA section 121, a state must provide a satisfactory process for consultation with local governments and Federal Land Managers (FLMs) in carrying out its NAAQS implementation requirements.

New Hampshire RSA 125–C:6, ''Powers and Duties of the Commissioner,'' authorizes the Commissioner of NHDES to advise, consult, and cooperate with the cities, towns, and other agencies of the state and federal government, interstate agencies, and other groups or agencies in matters relating to air quality. In addition, RSA 125–C:6 enables the Commissioner to coordinate and regulate the air pollution control programs of political subdivisions to plan and implement programs for the control and abatement of air pollution. Furthermore, New Hampshire regulations at Part Env-A 621 direct NHDES to notify town officials, regional planning agencies, and FLMs, among others, of the receipt of certain permit applications and the NHDES preliminary determination to issue, amend, or deny such permits. EPA proposes that New Hampshire meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

Sub-Element 2: Public Notification

Pursuant to CAA section 127, states must notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

As part of the fulfillment of RSA 125–C:6, New Hampshire issues press releases and posts warnings on its website advising people what they can do to help prevent NAAQS exceedances and avoid adverse health effects on poor air quality days. In addition, the NHDES website includes near real-time air quality data, and a record of historical data. Air quality forecasts are distributed daily via email to interested parties. Air quality alerts are sent by email to a large number of affected parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. Also, Air Quality Data Summaries of the year's air quality monitoring results are issued annually and posted on the NHDES website. New Hampshire is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that New Hampshire meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

Sub-Element 3: PSD

EPA has already discussed New Hampshire's PSD program in the context of infrastructure SIPs in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and determined that it satisfies the requirements of EPA's PSD implementation rules, with the exception of the air quality modeling provision. Therefore, the SIP also satisfies the PSD sub-element of section 110(a)(2)(J) for the 2015 ozone NAAQS, except for the modeling requirement. For the same reasons discussed under Section 110(a)(2)(C) above, EPA proposes to conditionally approve the SIP for the PSD sub-element of section 110(a)(2)(J) for the 2015 ozone NAAQS.

We are also proposing to correct our December 4, 2018, final action on New Hampshire's infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS, which was submitted to EPA on December 22, 2015. *See* 83 FR 62464. That correction entails replacing our previous full approval for this PSD sub-element with a conditional approval based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03 needed to fully approve this infrastructure sub-element. This correction is explained in more detail in the discussion of section 110(a)(2)(K) below.

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 memorandum, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to

infrastructure SIPs for the 2015 ozone NAAQS. Therefore, we are not proposing action on this sub-element.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA also recommends in the 2013 memorandum that, to meet section 110(a)(2)(K), a state submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request.

RSA 125–C:6 authorizes the Commissioner of the NHDES to review the potential impact of major sources through modeling. For major sources, NHDES sends modeling data to EPA along with the draft major permit. For non-major sources, Part Env-A 606, Air Pollution Dispersion Modeling Impact Analysis Requirements, specifies the air pollution dispersion modeling impact analysis requirements that apply to owners and operators of certain sources and devices in order to demonstrate compliance with the New Hampshire SIP, RSA 125–C, RSA 125–I, and any rules adopted thereunder. The state also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban air shed modeling for ozone and PM, if necessary.

As noted in our discussion of section 110(a)(2)(C), the EPA Administrator's approved air quality models, databases, and other requirements are found in EPA's modeling guidelines at 40 CFR part 51, appendix W, which EPA revised on January 17, 2017. 82 FR 5182; *see also* 82 FR 14324 (Mar. 20, 2017). New Hampshire's SIP, however, references an earlier version of appendix W. *See* Part Env-A 619.03(a). Therefore, New Hampshire's SIP must be updated to provide for the performance of modeling prescribed by EPA's January 17, 2017, revisions. In a letter dated June 3, 2020, NHDES committed to pursuing revisions to Part Env-A 619.03, *PSD Program Requirements,* that would update the reference to 40 CFR 52.21 in Part Env-A 619.03 so as to incorporate EPA's revisions to appendix W and to submitting these revisions to EPA within one year of our final approval of today's proposed action.[12] With such revision of Env- 619.03, New Hampshire's SIP would provide for the performance of such air quality modeling as the EPA Administrator has prescribed, as required by section 110(a)(2)(K) of the Act.

Because New Hampshire has committed to submit, but has not yet submitted, necessary revisions to Part Env-A 619.03 that would provide for the performance of such air quality modeling as the EPA Administrator has prescribed, EPA proposes to conditionally approve section 110(a)(2)(K) for the 2015 ozone NAAQS.

For the same reason, we also propose to conditionally approve section 110(a)(2)(K) of New Hampshire's infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS, which was submitted on December 22, 2015. EPA previously proposed, but never finalized, full approval of this submission for element K, on April 10, 2018. *See* 83 FR 15343; 83 FR 62464. In today's action, EPA is rescinding its previous proposed full approval for section 110(a)(2)(K) for the 2012 $PM_{2.5}$ NAAQS [13] and is re-proposing as a conditional approval because, as stated above, New Hampshire's SIP must be updated to provide for the performance of modeling prescribed by EPA's January 17, 2017, revisions, and New Hampshire has committed to making this update. In addition, while EPA never finalized its proposed approval of New Hampshire's submittal for the 2012 $PM_{2.5}$ NAAQS for section 110(a)(2)(K), EPA did finalize its approval of the remaining infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS on December 4, 2018, including approval of section 110(a)(2)(D)(i)(II), sub-element 2 of 110(a)(2)(C), and sub-element 3 of 110(a)(2)(J). In today's action, EPA is proposing to correct those approvals and to replace them with conditional approvals. EPA's previous approvals for section 110(a)(2)(D)(i)(II), sub-element 2 of 110(a)(2)(C) and sub-element 3 of 110(a)(2)(J) were in error; EPA's PSD regulations at 40 CFR 51.166(*l*) require a State's SIP to ''provide for procedures which specify that [a]ll applications of air quality modeling . . . shall be based on the applicable models, data bases, and other requirements specified in'' EPA's Guideline on Air Quality Models in appendix W of 40 CFR part 51. As explained earlier, New Hampshire's SIP currently references an earlier version of appendix W that has since been superseded. Therefore, New Hampshire's SIP must be updated to refer to an edition of EPA's regulations that incorporates the January 17, 2017, revisions to appendix W. Because the EPA Administrator's approved modeling requirements are found in appendix W, such a revision would satisfy the section 51.166(*l*) requirement that the SIP provide for procedures that specify that all applications of modeling be based on the requirements in appendix W. Consequently, we are proposing to conditionally approve New Hampshire's submittal for the PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS based on the state's commitment to submit in a timely manner the necessary revisions to Part Env-A 619.03.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit.

New Hampshire implements and operates the Title V permit program, which EPA approved on September 24, 2001. *See* 66 FR 48806. Chapter Env-A 700, Permit Fee System, establishes a fee system requiring the payment of fees to cover the costs of: Reviewing and acting upon applications for the issuance of, amendment to, modification to, or renewal of a temporary permit, state permit to operate, or Title V operating permit; implementing and enforcing the terms and conditions of these permits; and developing, implementing, and administering the Title V operating permit program. In addition, Part Env-A 705 establishes the emission-based fee program for Title V and non-Title V sources.

Therefore, EPA proposes that New Hampshire meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2015 ozone NAAQS.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

To satisfy Element M, states must provide for consultation with, and participation by, local political

[12] This letter is included in the docket for today's action.

[13] EPA received one set of public comments relevant to the April 10, 2018, proposal to approve New Hampshire's 2012 $PM_{2.5}$ submission for section 110(a)(2)(K). Because EPA is rescinding that proposal, EPA is not responding to the comments submitted on that proposal. Any person wishing to comment on our action on section 110(a)(2)(K) for the 2012 $PM_{2.5}$ standard should submit comments on today's proposal.

subdivisions affected by the SIP. New Hampshire Chapter Env-A 200 and Part Env-A 204 provides a public participation process for all stakeholders that includes a minimum of a 30-day comment period and an opportunity for public hearing for revisions to the SIP. Additionally, RSA 125–C:6, ''Powers and Duties of the Commissioner,'' authorizes the Commissioner to consult and cooperate with the cities, towns, other agencies of the state and federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality.

EPA proposes that New Hampshire meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

III. Proposed Action

EPA is proposing to approve most of the elements of the infrastructure SIP submitted by New Hampshire on September 5, 2018, for the 2015 ozone NAAQS. Today's action does not include the ''good neighbor'' provisions (*i.e.,* section 110(a)(2)(D)(i)), also known as a state's Transport SIP. New Hampshire's Transport SIP for the 2015 ozone NAAQS will be addressed in a future action.

In addition, EPA is proposing to conditionally approve section 110(a)(2)(K) and the PSD-related elements, which include section 110(a)(2)(D)(i)(II), sub-element 2 of section 110(a)(2) (C), and sub-element 3 of section 110(a)(2)(J) of New Hampshire's infrastructure SIP for the 2015 ozone NAAQS based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03, *PSD Program Requirements.* EPA's proposed action regarding each infrastructure SIP requirement for the 2015 ozone NAAQS is contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON NEW HAMPSHIRE'S INFRASTRUCTURE SIP SUBMITTAL FOR THE 2015 OZONE AND 2012 $PM_{2.5}$ NAAQS

Element	2015 ozone NAAQS	2012 $PM_{2.5}$ NAAQS
(A): Emission limits and other control measures	A	PA
(B): Ambient air quality monitoring and data system	A	PA
(C)1: Enforcement of SIP measures	A	PA
(C)2: PSD program for major sources and major modifications	CA	CA
(C)3: Program for minor sources and minor modifications	A	PA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	No action	PA
(D)2: PSD	CA	CA
(D)3: Visibility Protection	A	PA
(D)4: Interstate Pollution Abatement	A	PA
(D)5: International Pollution Abatement	A	PA
(E)1: Adequate resources	A	PA
(E)2: State boards	A	PA
(E)3: Necessary assurances with respect to local agencies	NA	NA
(F): Stationary source monitoring system	A	PA
(G): Emergency power	A	PA
(H): Future SIP revisions	A	PA
(I): Nonattainment area plan or plan revisions under part D	+	+
(J)1: Consultation with government officials	A	PA
(J)2: Public notification	A	PA
(J)3: PSD	CA	CA
(J)4: Visibility protection	+	+
(K): Air quality modeling and data	CA	CA
(L): Permitting fees	A	PA
(M): Consultation and participation by affected local entities	A	PA

In the above table, the key is as follows:

A	Approve.
CA	Conditionally Approve.
+	Not germane to infrastructure SIPs.
No action	EPA is taking no action on this infrastructure requirement.
NA	Not applicable.
PA	Previously Approved.

We also propose to conditionally approve section 110(a)(2)(K) of New Hampshire's infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS, which was submitted on December 22, 2015. EPA approved all other elements of New Hampshire's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS on December 4, 2018 but, as previously mentioned, never took final action on section 110(a)(2)(K). In addition, we propose to correct that final rule (83 FR 62464) by conditionally approving 110(a)(2)(K) and replacing our approvals of the PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) with conditional approvals, based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03.

Finally, we are proposing to grant New Hampshire's request, pursuant to 40 CFR 51.152(d)(1), to exempt the state from the contingency plan requirement for the 2015 ozone standard for the Merrimack Valley—Southern New Hampshire Interstate AQCR based on the fact that the state is designated as unclassifiable/attainment for that standard.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit the necessary revisions to New Hampshire

Part Env-A 619.03 to satisfy 110(a)(2)(K) and the PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) of New Hampshire's infrastructure SIP for the 2012 $PM_{2.5}$ and 2015 ozone NAAQS. If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the necessary SIP revision. If EPA disapproves the new submittal, the conditionally approved section 110(a)(2)(K) and the PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) of New Hampshire's infrastructure SIP for the 2012 $PM_{2.5}$ and 2015 ozone NAAQS will also be disapproved at that time. If EPA approves the submittal, section 110(a)(2)(K) and the PSD-related requirements of section 110(a)(2)(D)(i)(II), sub-element 2 of 110(a)(2)(C), and sub-element 3 of 110(a)(2)(J) of the state's infrastructure SIP the 2012 $PM_{2.5}$ and 2015 ozone NAAQS will be fully approved in their entirety and will replace the conditionally approved elements in the SIP.

If EPA determines that it cannot issue a final conditional approval or if the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 17, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–16011 Filed 8–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0447; FRL–10012–92–Region 4]

Air Plan Approval; MS; BART SIP and Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, through parallel processing, a draft Mississippi State Implementation Plan (SIP) revision, submitted through a letter dated April 23, 2020, addressing best available retrofit technology (BART) determinations for 14 electric generating units (EGUs) (''draft BART SIP''). These EGUs were initially addressed in EPA's prior limited approval and limited disapproval actions on Mississippi's regional haze SIP because of deficiencies arising from the State's reliance on the Clean Air Interstate Rule (CAIR) to satisfy certain regional haze requirements. EPA proposes to approve the draft BART SIP and finds that it corrects the deficiencies that led to the limited approval and limited disapproval of the State's regional haze SIP; to withdraw the limited disapproval of the regional haze SIP; and to replace the prior limited approval with a full approval of the regional haze SIP as meeting all regional haze requirements of the Clean Air Act (CAA or Act) for the first implementation period. In addition, EPA is proposing to approve the State's first periodic report describing progress towards reasonable progress goals (RPGs) established for regional haze and the associated determination that the State's regional haze SIP is adequate to meet these RPGs for the first implementation period (''Progress Report''). The State submitted the

progress report as a SIP revision by letter dated October 4, 2018.

DATES: Comments must be received on or before September 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0447, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michele Notarianni or Gobeail McKinley, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via telephone at (404) 562–9031 or electronic mail at *notarianni.michele@epa.gov.* Ms. McKinley can be reached via telephone at (404) 562–9230 or electronic mail at *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Parallel Processing

Parallel processing refers to a process that utilizes concurrent state and federal proposed rulemaking actions. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing and completing its public comment process under state law. EPA reviews this proposed state action and prepares a notice of proposed rulemaking (NPRM) under federal law.[1] If, after the state completes its public comment process and after EPA's public comment process has run, the state changes its final submittal from the proposed submittal, EPA evaluates those changes and decides whether to publish another NPRM in light of those changes or to proceed to taking final action on its proposed action and describe the state's changes in its final rulemaking action. Any final rulemaking action by EPA will occur only after the final submittal has been adopted by the state and formally provided to EPA.

In its previously submitted regional haze SIP,[2] the Mississippi Department of Environmental Quality (MDEQ) relied on CAIR [3] to meet BART requirements for the 14 BART-eligible units, located at seven facilities, formerly subject to that trading program.[4] Mississippi's newly submitted draft BART SIP addresses BART for these EGUs in lieu of relying on CAIR as an alternative to BART. Because the draft BART SIP has not yet completed the State's public notice-and-comment process, Mississippi has requested that EPA parallel process the SIP revision with the State's rulemaking proceedings. Mississippi submitted the draft BART SIP to EPA on April 23, 2020,[5] and noticed it for public comment on the same date. The State's public comment period closed on May 23, 2020.

After Mississippi submits the final BART SIP (including a response to all public comments raised during the State's public participation process), EPA will evaluate the submittal. If the State changes the final submittal from the draft BART SIP that EPA is proposing to approve today, EPA will evaluate those changes for significance. If EPA finds any such changes to be significant, then the Agency intends to determine whether to re-propose based on the revised submission or to proceed to take final action on the BART SIP as changed by the State.

II. Background

A. Regional Haze and the Regional Haze Plan

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit $PM_{2.5}$ (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$ which impairs visibility by scattering and absorbing light. Visibility impairment (*i.e.,* light scattering) reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects (including premature death, heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms) and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [6] in many Class I areas [7] in the western United States is 100–150 kilometers (km), or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 km, or about one-fifth of the visual range that would exist under estimated natural conditions. *See* 64 FR 35714, 35715 (July 1, 1999). CAA programs

[1] Although not the case in this proposed rulemaking, in some instances, EPA's NPRM is published in the **Federal Register** during the same time frame that the state is holding its public hearing and conducting its public comment process. The state and EPA then provide for concurrent public comment periods on both the state action and federal action.

[2] In this notice, EPA is using ''regional haze SIP'' and ''regional haze plan'' interchangeably.

[3] CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and nitrogen oxide (NO_X) emissions in 27 eastern states (and the District of Columbia), including Mississippi, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone national ambient air quality standards (NAAQS) or the 1997 fine particulate matter ($PM_{2.5}$) NAAQS.

[4] *See* 77 FR 38191 (June 27, 2012); 77 FR 33642 (June 7, 2012).

[5] EPA received MDEQ's April 23, 2020, draft BART SIP on April 24, 2020.

[6] Visual range is the greatest distance, in km or miles, at which a dark object can be viewed against the sky.

[7] Areas designated as mandatory Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979); 40 CFR part 81 Subpart D. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. *See* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I area is the responsibility of a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I Federal area.''

have reduced emissions of haze-causing pollution, lessening visibility impairment and resulting in improved average visual ranges.[8]

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, anthropogenic impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I federal areas. Congress added section 169B to the CAA in 1990 to address regional haze issues, and EPA subsequently promulgated the Regional Haze Rule (RHR).[9] The RHR established a requirement to submit a regional haze SIP which applies to all 50 states, the District of Columbia, and the Virgin Islands.[10] Each jurisdiction was required to submit a SIP addressing regional haze requirements for the first implementation period no later than December 17, 2007.[11]

On September 22, 2008, Mississippi submitted a SIP revision to address regional haze in Class I areas impacted by emissions from Mississippi and subsequently amended that submittal on May 9, 2011. As discussed further in Section II.B.2, EPA finalized a limited approval and a limited disapproval of the Mississippi regional haze SIP in June 2012 because of deficiencies [12] in the regional haze SIP arising from the State's reliance on CAIR to meet certain regional haze requirements, including BART.

B. BART

1. Statutory and Regulatory Requirements

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate ''Best Available Retrofit Technology'' as determined by the state. On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in the BART evaluation process. Under the RHR and the BART Guidelines, the BART evaluation process consists of three steps: (1) An identification of all BART-eligible sources, (2) an assessment of whether the BART-eligible sources are subject to BART, and (3) a determination of the BART controls.[13] States must conduct BART determinations for all ''BART-eligible'' sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area, or in the alternative, adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is generally encouraged, but not required, to follow the BART Guidelines in other aspects.

In the first step of the BART evaluation process, states are required to identify all the BART-eligible sources within their boundaries by utilizing the three eligibility criteria in the Act and the RHR: (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit(s) began operation on or after August 6, 1962, and was in existence on August 6, 1977; and (3) the potential emissions of any visibility-impairing pollutant from the units exceed 250 tons per year (tpy).[14] With respect to the third criterion, states must address all visibility-impairing pollutants emitted by a BART-eligible source, which is the collection of emissions units whose potential to emit for a visibility-impairing pollutant is greater than 250 tpy. The most significant visibility-impairing pollutants are SO_2, NO_X, and particulate matter (PM).[15] States should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.[16] Sources that meet all three criteria are BART-eligible.

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, *i.e.,* those sources that are subject to BART. Section III of the BART Guidelines allows states to exempt BART-eligible sources from further BART review (*i.e.,* deem them not subject to BART) via modeling and emissions analyses demonstrating that the sources may not reasonably be anticipated to cause or contribute to any visibility impairment in any Class I area. For such sources, a state need not make a BART determination.

For states using modeling to determine whether single sources are subject to BART, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area.[17] Under the BART Guidelines, states may select an exemption threshold value for their BART modeling below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Generally, the exemption threshold set by the state should not be higher than 0.5 deciview (dv).[18] States

[8] An interactive ''story map'' depicting efforts and recent progress by EPA and states to improve visibility at national parks and wilderness areas is available at: *http://arcg.is/29tAbS3.*

[9] *See* 64 FR 35713 (July 1, 1990).

[10] 40 CFR 51.300(b).

[11] 40 CFR 51.308(b).

[12] The deficiencies resulting from Mississippi's reliance on CAIR to satisfy BART relate to those BART determinations and to the use of those determinations as an element of the required long-term strategy for achieving RPGs. Mississippi's reliance on CAIR did not affect its reasonable progress control analysis because the State determined in its regional haze SIP that no controls were necessary for reasonable progress given the areas of influence and consultation with neighboring states. *See* 77 FR 11879, 11888 (February 28, 2012) for further information on the reasonable progress evaluation.

[13] See 40 CFR 51.308(e); BART Guidelines, I.F.

[14] *See* CAA section 169A(b)(2)(A), (g)(7); 40 CFR 51.301 (definition of ''Existing stationary facility''); *see also* BART Guidelines, II.

[15] *See* 70 FR 39160.

[16] *See* BART Guidelines, II.A.3, III.A.2.

[17] *See* BART Guidelines, III.A.3 (''Option 1: Individual Source Attribution Approach (Dispersion Modeling)'').

[18] A dv is the unit of measurement on the dv index scale for quantifying in a standard manner human perceptions of visibility. *See* 40 CFR 51.301. The BART Guidelines state that ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility

are also free to use a lower threshold if, for instance, they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

Once a state has determined which sources are subject to BART, the state must determine BART for these sources in the third and final step of the BART evaluation process. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor, but must reasonably consider all five factors.

A regional haze SIP must include source-specific BART emissions limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169A(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a)(2).

2. Draft BART SIP

a. Relationship to EPA's Transport Rules

Like many other states formerly subject to CAIR, Mississippi had relied on CAIR in its regional haze SIP to meet certain requirements of EPA's RHR, including BART requirements for emissions of SO_2 and NO_X from its BART-eligible EGUs in the State.[19] This reliance was consistent with EPA's regulations at the time that Mississippi developed its regional haze SIP. *See* 70 FR 39104 (July 6, 2005). However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) invalidated CAIR, although it ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits CAIR provided. *See North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and issued Federal Implementation Plans (FIPs) to implement the rule in CSAPR-subject states.[20] Although Mississippi was covered under CAIR's annual NO_X and SO_2 trading programs, only CSAPR's ozone-season NO_X program applied to the State. *See* 40 CFR 52.1284.[21] Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program. However, numerous parties filed petitions for review of CSAPR, and at the end of 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. Order of December 30, 2011, in *EME Homer City Generation, L.P.* v. *EPA,* D.C. Cir. No. 11–1302. EPA ultimately began implementation of CSAPR on January 1, 2015.[22]

During this same timeframe, EPA also finalized a limited approval and a limited disapproval of the Mississippi regional haze SIP in June 2012 because of deficiencies in the regional haze SIP arising from the State's reliance on CAIR as an alternative to BART for the State's BART-eligible EGUs.[23] *See* 77 FR 38191 (June 27, 2012) (limited approval); 77 FR 33642 (June 7, 2012) (limited disapproval). In the limited disapproval action, EPA did not subject Mississippi to a FIP. Mississippi had requested that EPA not issue a FIP and instead provide the State with additional time to correct the deficiencies in its regional haze SIP through a SIP revision.[24]

Accordingly, Mississippi began working on a new SIP submission to address the limited disapproval of the State's regional haze SIP and the change from CAIR and CSAPR. One important impact of the transition from CAIR to CSAPR was that Mississippi previously relied on CAIR as an alternative to BART for both SO_2 and NO_X because it participated in trading programs for both pollutants under CAIR; however, because Mississippi is only part of the CSAPR seasonal NO_X program (and not part of the SO_2 program), it could not rely on CSAPR to satisfy BART for SO_2. Thus, the State worked with the BART-eligible EGUs formerly subject to CAIR to determine how these facilities would now address BART.[25] These 14 BART-eligible units are located at the following seven facilities:

- Cooperative Energy[26]—Plant Moselle (Plant Moselle);
- Cooperative Energy—R. D. Morrow Sr. Generating Plant (Plant Morrow);
- Entergy Mississippi, Inc.—Baxter Wilson Plant (Baxter Wilson);
- Entergy Mississippi, Inc.—Gerald Andrus Plant (Gerald Andrus);
- Mississippi Power Company—Plant Chevron (Plant Chevron);
- Mississippi Power Company—Plant Daniel (Plant Daniel); and
- Mississippi Power Company—Plant Watson (Plant Watson).

As explained further in Section III of this notice, the draft BART SIP proposes to find that these 14 BART-eligible EGUs are exempt from BART because visibility modeling and/or supplemental analyses demonstrate that they are not reasonably anticipated to cause or contribute to visibility impairment in any Class I area.

b. Pollutants Addressed

As described earlier, the BART Guidelines direct states to address SO_2, NO_X, and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairing pollutants, and to exercise judgment in determining whether VOC or NH_3 emissions from a source impair visibility in an area. *See* 70 FR 39160. Mississippi had previously determined that VOC from anthropogenic sources and NH_3 from point sources are not significant visibility-impairing pollutants in Mississippi for the first implementation period. The State continues to rely on these findings in its draft BART SIP. EPA previously approved these findings in our earlier limited approval, and the Agency is not

impairment should not be higher than 0.5 deciviews.'' *See* BART Guidelines, III.A.1.

[19] In addition to relying on CAIR to satisfy BART SO_2 and NO_X requirements, these sources also modeled their coars PM (PM_{10}) emissions and found that those emissions do not contribute to visibility impairment in any Class 1 area. *See* 77 FR 11890.

[20] CSAPR requires substantial reductions of SO_2 and NO_X emissions from EGUs in 27 states in the Eastern United States that significantly contribute to downwind nonattainment of the 1997 $PM_{2.5}$ and ozone NAAQS, 2006 $PM_{2.5}$ NAAQS, and the 2008 8-hour ozone NAAQS.

[21] *See also* 76 FR 48208 (Mississippi FIP for 1997 ozone NAAQS); 81 FR 74504 (October 26, 2016) (Mississippi FIP for 2008 ozone 8-hour ozone NAAQS).

[22] *See* 79 FR 71663.

[23] The State's analysis of reasonable progress controls was not dependent on CAIR, and thus not affected by CAIR's invalidation. *See* 77 FR 11879, 11888 (February 28, 2012) (finding no controls were necessary for reasonable progress given the areas of influence and consultation with neighboring states).

[24] *See* 77 FR 33654.

[25] EPA previously approved the State's identification of BART-eligible sources in its limited approval action. EPA is not reexamining these BART-eligibility findings in this rulemaking, and any comments on this issue are beyond the scope of this notice.

[26] Cooperative Energy was formerly known as South Mississippi Electric Power Association.

reexamining this issue in this rulemaking.[27]

c. Dispersion Modeling Methodology

Consistent with the BART Guidelines, Mississippi requested that each of its seven BART-eligible facilities formerly subject to CAIR develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas. The BART Guidelines allow states to use the CALPUFF [28] modeling system (CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area, and therefore, to determine whether an individual source may reasonably be anticipated to cause or contribute to impairment of visibility in Class I areas (*i.e.,* whether it is subject to BART). The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions.

The VISTAS states, including Mississippi, developed a ''Protocol for the Application of CALPUFF for BART Analyses'' (VISTAS BART Modeling Protocol).[29] Mississippi, in coordination with VISTAS, used this modeling protocol to apply CALPUFF to determine whether individual sources in Mississippi were subject to or exempt from BART. EPA previously approved the use of this modeling methodology by Mississippi,[30] and the Agency believes that the continued use of this modeling methodology in the draft BART SIP remains appropriate.

d. Contribution Threshold

In its prior regional haze submissions, MDEQ used a contribution threshold of 0.5 dv for determining which BART-eligible units (including the 14 units addressed by the draft BART SIP) are subject to BART. EPA previously approved the use of this 0.5 dv BART contribution threshold, and the Agency is not reexamining this issue in this rulemaking.[31]

C. Progress Report Requirements

The RHR requires each state to submit progress reports that evaluate progress towards the RPGs for each mandatory Class I area within the state and for each Class I area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). In addition, the provisions of 40 CFR 51.308(h) require a state to submit, at the same time as each progress report, a determination of the adequacy of the state's existing regional haze plan. The first progress report is due five years after submittal of the initial regional haze plan and must be submitted as a SIP revision. Mississippi submitted its progress report for the first implementation period to EPA on October 4, 2018.

III. Summary and EPA's Evaluation of Mississippi's BART SIP

A. Summary of Mississippi's BART SIP

The draft BART SIP sets forth MDEQ's subject-to-BART determinations for the BART-eligible sources formerly subject to CAIR, and finds that none of these sources is subject to BART. Table 1 identifies these BART-eligible sources, the highest modeled impact at the Class I area nearest each source,[32] and the State's determination regarding whether the sources are subject to BART.

TABLE 1—MISSISSIPPI EGUS SUBJECT-TO-BART MODELING

Facility name	BART-eligible units	Nearest Class I Area	Maximum 24-hour 98th percentile visibility impact [33] (dv)	Subject to BART?
Baxter Wilson	1, 2	Breton Wilderness Area (Breton) (LA)	0.49*	No.
Gerald Andrus	1	Caney Creek Wilderness Area (Caney Creek) (AR)	0.15*	No.
Plant Chevron	1, 2, 3, 4	Breton (LA)	0.27	No.
Plant Daniel	1, 2	Breton (LA)	0.39	No.
Plant Morrow	1, 2	Breton (LA)	N/A**	N/A**.
Plant Moselle	3	Breton (LA)	0.05	No.
Plant Watson	4, 5	Breton (LA)	0.44	No.

* These visibility impacts for Baxter Wilson and Gerald Andrus are based on burning natural gas only as these facilities have removed the ability to burn fuel oil at Unit 1 for each facility. In addition, as explained further below, the visibility impact for Baxter Wilson was modeled based on emissions from both Unit 1 and Unit 2, but Unit 2 at Baxter Wilson has since been removed.

** ''N/A'' indicates that there is no visibility impact from Plant Morrow Units 1 and 2 because these BART-eligible units were removed from service.

[27] *See* 77 FR 11887–88 (discussing analysis by the State and the Visibility Improvement State and Tribal Association of the Southeast (VISTAS)).

[28] EPA's reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (*e.g.,* the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer at: *http://www.src.com/calpuff/download/download.htm.*

[29] The VISTAS BART Modeling Protocol, December 22, 2005, Revision 3.2 (August 31, 2006), is included in Appendix L.8 of the BART SIP.

[30] *See* 77 FR 11888–89.

[31] The factors supporting the Agency's original approval of the 0.5 dv BART contribution threshold have not changed. *See* 77 FR 11889 (Feb. 28, 2012). In fact, there are now fewer BART-eligible sources (due to the removal of all BART-eligible units at Plant Morrow and Unit 2 at Baxter Wilson) and less visibility-impairing pollutants emitted from BART-eligible sources than existed in the record at the time of EPA's earlier limited approval (due to SO_2 scrubbers installed at Plant Daniel and removal of fuel oil burning capabilities for Unit 1 at Gerald Andrus and Unit 1 at Baxter Wilson). These changes are discussed further in Section III of this notice.

[32] MDEQ followed the VISTAS BART Modeling protocol which specifies that BART exemption modeling should be performed for Class I areas located within 300 km of each BART-eligible source. The Class I areas listed in Table 1 are the only Class I areas located within 300 km of each BART-eligible source with the exception of Baxter Wilson, which has no Class I areas within 300 km and is located 310 km from Breton.

[33] EPA's BART Guidelines recommend comparing visibility improvements between control options using the 98th percentile of 24-hour delta dv, which is equivalent to the facility's 8th highest visibility impact day. *See* 70 FR 39162 (July 6, 2005). The 98th percentile is recommended rather than the maximum value to allow for uncertainty in the modeled impacts and to avoid undue influence from unusual meteorological conditions. The ''delta'' refers to the difference between total dv impact from the facility plus natural background, and dv of natural background alone, so ''delta deciviews'' is the estimate of the facility's impact relative to natural visibility conditions. The VISTAS BART Modeling Protocol interprets EPA's recommended use of the 98th percentile value as the highest of the three annual 98th percentile values at a particular Class I area or the 22nd highest value in the combined 3-year period, whichever is more conservative (p.14).

The original modeling for each of these plants was generally performed in the early 2010s, using data from an earlier period (*e.g.,* 2001–03 or 2003–05) and earlier versions of the CALPUFF model. For four facilities (Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle), the State supplemented the original modeling with new analyses of emissions changes for SO_2, NO_X, and PM_{10} [34] since the BART baseline period. For each plant, recent emissions have either remained roughly equivalent to or decreased relative to the baseline period modeled. Accordingly, the State concluded that the prior modeling results remain valid for determining whether the sources are subject to BART.[35]

For Plant Daniel and Plant Watson, the sources conducted updated modeling with recent emissions data and the current version of CALPUFF. Finally, Plant Morrow's BART-eligible units are permanently retired, and thus there is no need to determine whether this source is subject to BART.

The following subsections discuss in more detail MDEQ's assessment of the BART exemption modeling for each of the seven facilities.

1. Mississippi Power Company—Chevron Cogenerating Plant Units 1, 2, 3, and 4

Units 1, 2, 3, and 4 at Plant Chevron, located in Pascagoula, Mississippi, and owned and operated by Mississippi Power Company, have been identified by MDEQ as BART-eligible. Plant Chevron is located approximately 48 km north of Breton. Plant Chevron is an electric generating facility with four gas-fired combined cycle turbines. All four units each have the potential to emit more than 250 tpy of NO_X emissions. Plant Chevron performed CALPUFF modeling in 2011 on these four units utilizing CALPUFF version 5.754 Level 060202. The modeling analysis predicted a maximum annual 98th percentile 24-hour average visibility impact of 0.27 dv over the three years modeled on Breton, and a 22nd highest day's visibility impact over all three years of 0.24 dv.

As explained previously, because the original modeling was conducted years ago, MDEQ also performed a supplemental emissions analysis for this facility. MDEQ compared more current (2016–2018) SO_2, NO_X, and PM_{10} emissions values from annual emissions reports submitted by Plant Chevron with the 2003–2005 baseline emissions values and showed that recent emissions have remained roughly equivalent to or decreased relative to the baseline period modeled. Therefore, MDEQ concluded that it is not necessary to remodel using recent emissions. Table 2 compares the maximum 24-hour emissions rates for 2003–2005 that were modeled in 2011 against updated maximum 24-hour emissions rates for 2016–2018. The State found that: (1) The maximum SO_2 emissions rates from all four units combined were slightly higher, but still quite low, in the updated period compared to the baseline period (approximately 8 pounds per hour (lb/hr) vs 4 lb/hr); (2) the maximum NO_X emissions rates from all four units combined were significantly lower in the updated period compared to the baseline period (approximately 420 lb/hr vs 558 lb/hr); and (3) the maximum PM_{10} emissions rates from all four units combined were approximately the same (9 lb/hr). The 2011 CALPUFF modeling found that most of the visibility impact from this facility was from nitrates, so the recent decrease in NO_X emissions would suggest a corresponding decrease in visibility impact on Breton.

In addition, Table 3 compares the annual 2003–2005 baseline emissions of SO_2, NO_X, and PM_{10} to 2016–2018 annual emissions. Annual emissions are not an input into CALPUFF modeling, but MDEQ elected to consider them. The annual emissions comparison provides a general indication of overall trends in emissions between the baseline period that was used in the 2011 modeling and more recent emissions. The annual emissions of NO_X and SO_2 are higher in the 2016–2018 period and PM_{10} emissions are lower.

TABLE 2—PLANT CHEVRON MODELED (2003–2005) AND 2016–2018 MAXIMUM 24-HOUR EMISSIONS RATES

Emission unit	Maximum 24-hour emissions rates (lb/hr) (2003–2005)			Maximum 24-hour emissions rates (lb/hr) (2016–2018)		
	SO_2	NO_X	PM_{10}	SO_2	NO_X	PM_{10}
Unit 1	0.75	119.58	1.90	0.17	90.91	1.88
Unit 2	0.78	122.64	1.95	0.17	88.84	1.83
Unit 3	1.00	159.23	2.55	4.11	119.64	2.47
Unit 4	0.98	156.84	2.50	3.66	120.56	2.49
Total	3.51	558.29	8.90	8.11	419.95	8.67

TABLE 3—PLANT CHEVRON BASELINE (2001–2003) AND CURRENT (2016–2018) PERIOD ANNUAL EMISSIONS COMPARISON

Year	Combined annual emission (tons) units 1–4		
	SO_2	NO_X	PM_{10}
2001	1.61	1,238.26	66.14

[33] EPA's BART Guidelines recommend comparing visibility improvements between control options using the 98th percentile of 24-hour delta dv, which is equivalent to the facility's 8th highest visibility impact day. *See* 70 FR 39162 (July 6, 2005). The 98th percentile is recommended rather than the maximum value to allow for uncertainty in the modeled impacts and to avoid undue influence from unusual meteorological conditions. The ''delta'' refers to the difference between total dv impact from the facility plus natural background, and dv of natural background alone, so ''delta deciviews'' is the estimate of the facility's impact relative to natural visibility conditions. The VISTAS BART Modeling Protocol interprets EPA's recommended use of the 98th percentile value as the highest of the three annual 98th percentile values at a particular Class I area or the 22nd highest value in the combined 3-year period, whichever is more conservative (p.14).

[34] PM_{10} includes $PM_{2.5}$, thus, MDEQ evaluated PM_{10} emissions data in the supplemental emissions analyses in the draft BART SIP.

[35] In addition, as further explained in Section III.B.2, EPA has also evaluated the potential impacts of updates to the CALPUFF model, and found that such updates are unlikely to result in significantly different visibility impacts.

TABLE 3—PLANT CHEVRON BASELINE (2001–2003) AND CURRENT (2016–2018) PERIOD ANNUAL EMISSIONS COMPARISON—Continued

Year	Combined annual emission (tons) units 1–4		
	SO_2	NO_X	PM_{10}
2002	1.55	1,181.77	62.59
2003	1.44	1,264.50	67.65
2016	8.01	1,430.36	29.50
2017	7.77	1,274.89	26.30
2018	5.76	1,240.95	26.11

In sum, MDEQ concluded that Plant Chevron Units 1, 2, 3, and 4 are not subject to BART, and thus, no further BART analysis is required because Plant Chevron's 2011 modeling found that its visibility impact was 0.27 dv which is significantly less than 0.5 dv, and there have been no significant increases in SO_2, NO_X, or PM_{10} emissions since the modeled baseline period. Specifically, there have been no significant increases in the maximum 24-hour SO_2 nor PM_{10} emissions rates, and the maximum 24-hour NO_X emissions rates have declined.

2. Mississippi Power Company—Plant Victor J Daniel Units 1 and 2

Units 1 and 2 at Plant Daniel, located in Escatawpa, Mississippi, and owned and operated by Mississippi Power Company, have been identified by MDEQ as BART-eligible. Plant Daniel is approximately 63 km northeast of Breton. Plant Daniel is an electric generating facility with two coal-fired steam EGUs. Each of the units have the potential to emit over 250 tpy of SO_2, NO_X, and PM_{10}. Plant Daniel controls SO_2 emissions from these units through scrubbers (*i.e.,* wet flue gas desulfurization (FGD) systems) installed to comply with EPA's Mercury and Air Toxics Standards (MATS).[36] Scrubber operation began in September 2015. Mississippi Power Company performed updated CALPUFF modeling on Units 1 and 2 using recent emissions data (*i.e.,* from September 2015-August 2018) and the current EPA-approved version of CALPUFF. The modeling analysis predicted a maximum annual 98th percentile 24-hour average visibility impact of 0.39 dv over the three years modeled, and a 22nd highest day's visibility impact over all three years of 0.33 dv. MDEQ concluded that Plant Daniel's Units 1 and 2 are not subject to BART, and thus, no further BART analysis is required because the 98th percentile 24-hour average visibility impact of 0.39 dv is below the State's 0.5 dv contribution threshold for BART.

3. Entergy Mississippi Inc.—Baxter Wilson Plant Units 1 and 2

Units 1 and 2 at Baxter Wilson, located in Vicksburg, Mississippi, and owned and operated by Entergy Mississippi, Inc., have been identified by MDEQ as BART-eligible. Baxter Wilson is located approximately 310 km northwest of Breton. Baxter Wilson is an electric generating facility that currently has one natural gas-fired unit (Unit 1). The initial CALPUFF modeling was performed in 2012 with CALPUFF version 5.8 Level 070623. The modeling used the maximum 24-hour emissions rates over the three-year baseline period of 2001–2003 assuming that both Units 1 and 2 fired only natural gas. This modeling indicated a maximum 98th percentile 24-hour impact of 0.49 dv over the three years modeled and a 22nd highest day's visibility impact over all three years of 0.39 dv, both of which are below the contribution threshold of 0.5 dv.

Since the modeling was performed, the facility has undergone changes. Unit 1 at Baxter Wilson originally was a dual fuel oil and gas-fired unit, but the fuel oil tanks have been rendered unusable, and the capability to burn fuel oil is in the process of being removed.[37] Unit 2, the larger unit, permanently retired thereby reducing SO_2, NO_X, and PM emissions from the plant.[38] Given these changes and the fact that the original modeling was conducted years ago, MDEQ also performed a supplemental emissions analysis for this facility. MDEQ compared more current (2016–2018) SO_2, NO_X, and PM_{10} emissions values from annual emissions reports submitted by Baxter Wilson with the 2001–2003 baseline emissions values and showed that recent emissions have remained roughly equivalent to or decreased relative to the baseline period modeled. Therefore, MDEQ concluded that it is not necessary to remodel using recent emissions. Table 4 compares the maximum 24-hour emissions rates for 2001–2003 that were modeled with updated rates for 2016–2018. Because the facility can no longer burn fuel oil, all emissions values in Table 4 reflect the burning of natural gas. The State found that the combined current emissions rates from Units 1 and 2 have decreased considerably relative to the baseline values modeled for SO_2, NO_X, and PM_{10} because Unit 2 has shut down. In particular, current NO_X emissions rates are approximately one-fifth of the modeled emissions rates.

In addition, Table 5 compares the annual baseline emissions of 2001–2003 to 2016–2018 annual emissions. Table 5 reflects annual emissions from burning both natural gas and fuel oil. MDEQ concludes that the current annual emissions are much less than the baseline emissions for all pollutants.

[36] See June 15, 2020, email from MDEQ to EPA Region 4 that includes an October 30, 2015 title V permit renewal application addendum for Plant Daniel addressing MATS requirements. These documents are included in the docket for this proposed action.

[37] See May 27, 2020, email from MDEQ to EPA Region 4 that includes a September 8, 2019, letter providing an update on the removal of fuel oil capabilities at Gerald Andrus and Baxter Wilson. These documents are included in the docket for this proposed action.

[38] Unit 2 at Baxter Wilson was decommissioned in June 2018. A copy of the Acid Rain and CSAPR Trading Programs Retired Unit Exemption Form is located in Appendix L.7.2 of the draft BART SIP.

TABLE 4—BAXTER WILSON MODELED 2001–2003 AND 2016–2018 MAXIMUM 24-HOUR EMISSIONS RATES—NATURAL GAS ONLY

Emission unit	Maximum 24-hour emissions rates (lb/hr) (2001–2003)			Maximum 24-hour emissions rates (lb/hr) (2016–2018)		
	SO_2	NO_X	PM_{10}	SO_2	NO_X	PM_{10}
Unit 1	2.71	2,030	35.69	3.67	1,337	36.17
Unit 2	2.40	4,674	49.77	0	0	0
Total	5.11	6,704	85.46	3.67	1,337	36.17

TABLE 5—BAXTER WILSON BASELINE (2001–2003) AND CURRENT (2016–2018) PERIOD ANNUAL EMISSIONS COMPARISON—NATURAL GAS AND FUEL OIL

Year	Combined annual emission (tons)		
	SO_2	NO_X	PM_{10}
2001	34,117.18	14,274.82	2,796.09
2002	8.34	6,375.26	102.94
2003	1.99	1,325.02	24.51
2016	2.49	1,550.71	25.19
2017	2.65	794.41	25.06
2018	3.08	1,111.63	34.08

MDEQ concluded that Baxter Wilson is not subject to BART, and no further BART analysis is required because the maximum 98th percentile 24-hour average visibility impact of 0.49 dv is below the State's 0.5 dv contribution threshold for BART, and recent maximum 24-hour emissions rates and annual emissions of SO_2, NO_X, and PM have declined since the 2001–2003 modeled baseline period.

4. Entergy Mississippi Inc.—Gerald Andrus Plant Unit 1

Gerald Andrus Unit 1, located in Greenville, Mississippi, and owned and operated by Entergy Mississippi, Inc., has been identified by MDEQ as BART-eligible. Gerald Andrus is located approximately 290 km east of Caney Creek. Gerald Andrus is an electric generating facility that currently has one natural gas-fired unit (Unit 1). The initial CALPUFF modeling performed in 2012 for Unit 1 using CALPUFF Version 5.8 Level 070623 was based on Unit 1 only firing natural gas. This modeling demonstrated a maximum 98th percentile 24-hour average visibility impact over the three years modeled of 0.15 dv and a 22nd highest day's visibility impact over all three years of 0.12 dv based on burning natural gas.

As with Baxter Wilson, the facility has undergone changes since the original modeling. Namely, Unit 1 at Gerald Andrus originally was a dual fuel oil- and gas-fired unit. As of April 23, 2020, Gerald Andrus removed the capability to utilize fuel oil.[39] Given this change and the fact that the original modeling was conducted years ago, MDEQ also performed a supplemental emissions analysis for this facility. MDEQ compared more current (2016–2018) SO_2, NO_X, and PM_{10} emissions values from annual emissions reports submitted by Gerald Andrus with the 2001–2003 baseline emissions values and showed that recent emissions have remained roughly equivalent to or decreased relative to the baseline period modeled. Therefore, MDEQ concluded that it is not necessary to remodel using recent emissions. The comparison of 2001–2003 modeled maximum 24-hour emissions rates to updated 2016–2018 maximum 24-hour emissions rates of SO_2, NO_X, and PM_{10} is shown in Table 6. Because the facility has removed the ability to burn fuel oil, all emissions values in Table 6 reflect the burning of natural gas. The State's evaluation found that the maximum 24-hour SO_2 emissions rates from 2016–2018 were essentially the same as the modeled value (approximately 3.8 lb/hr vs. 3.7 lb/hr), and that recent maximum 24-hour PM_{10} and NO_X emissions rates were less than the modeled emissions rates. In addition, Table 7 compares the annual 2001–2003 baseline emissions to 2016–2018 annual emissions of SO_2, NO_X, and PM_{10}. Table 7 reflects annual emissions from burning both natural gas and fuel oil. MDEQ concluded that the current annual emissions are much less than the baseline emissions for all pollutants.

[39] See May 27, 2020, email from MDEQ to EPA Region 4 with a September 8, 2019, letter providing an update on the removal of fuel oil capabilities at Gerald Andrus and Baxter Wilson. These documents are included in the docket for this proposed action.

TABLE 6—GERALD ANDRUS MODELED 2001–2003 AND 2016–2018 MAXIMUM 24-HOUR EMISSIONS RATES—NATURAL GAS ONLY

Emission unit	Maximum 24-hour emissions rates (lb/hr) (2001–2003)			Maximum 24-hour emissions rates (lb/hr) (2016–2018)		
	SO_2	NO_X	PM_{10}	SO_2	NO_X	PM_{10}
Unit 1	3.66	3,971	54.2	3.83	1,813	47.13

TABLE 7—GERALD ANDRUS BASELINE (2001–2003) AND CURRENT (2016–2018) PERIOD ANNUAL EMISSIONS COMPARISON—NATURAL GAS AND FUEL OIL

Year	Combined annual emission (tons)		
	SO_2	NO_X	PM_{10}
2001	32,725.12	8,417.70	2,108.27
2002	8.44	4,809.19	103.72
2003	12,568.21	6,626.94	1,096.43
2016	2.22	763.67	26.36
2017	1.53	436.82	17.26
2018	3.15	1,138.78	36.39

MDEQ concluded that Gerald Andrus is not subject to BART, and no further BART analysis is required because the 98th percentile 24-hour average visibility impact of 0.15 dv is well below the State's 0.5 dv threshold contribution for BART, 2016–2018 annual emissions of SO_2, NO_X, and PM have declined from 2001–2003 levels, and the maximum 24-hour emissions rates of SO_2, NO_X, and PM_{10} have remained equivalent to (SO_2) or lower than (NO_X and PM_{10}) those in the 2001–2003 modeled baseline period.

5. Cooperative Energy—R. D. Morrow Sr. Generating Plant Units 1 and 2

Plant Morrow Units 1 and 2, located in Purvis, Mississippi, and owned and operated by Cooperative Energy, were previously identified by MDEQ as BART-eligible. Plant Morrow is located approximately 138 km from Breton. On November 17, 2018, Units 1 and 2 were permanently retired.[40] MDEQ concluded that there are no other units at Plant Morrow that are BART-eligible, and therefore, the facility has no further BART obligations.

6. Cooperative Energy—Plant Moselle Unit 3

Plant Moselle Unit 3, located in Moselle, Mississippi, and owned and operated by Cooperative Energy, has been identified by MDEQ as BART-eligible. Plant Moselle is located approximately 170 km north of Breton. Plant Moselle is an electric generating facility that currently has one natural gas-fired unit (Unit 3). Plant Moselle conducted CALPUFF modeling for Unit 3 in 2011 using CALPUFF Version 5.8 Level 070623. The modeling analysis demonstrated a maximum 98th percentile 24-hour average visibility impact over the three years modeled of 0.05 dv, and a 22nd highest day's visibility impact over all three years of 0.042 dv.

Given that the original modeling was conducted years ago, MDEQ also performed a supplemental emissions analysis for this facility. MDEQ compared more current (2016–2018) SO_2, NO_X, and PM_{10} emissions values from annual emissions reports submitted by Plant Moselle with the 2001–2003 baseline emissions values and showed that recent emissions have remained roughly equivalent to or decreased relative to the baseline period modeled. Therefore, MDEQ concluded that it is not necessary to remodel using recent emissions. The comparison of modeled 2001–2003 maximum 24-hour emissions rates of SO_2, NO_X, and PM_{10} to updated 2016–2018 maximum 24-hour emissions rates is shown in Table 8. The State's evaluation found that the 2016–2018 maximum 24-hour SO_2 emissions rate was equivalent to the modeled value (0.25 lb/hr vs. 0.24 lb/hr). MDEQ notes maximum 24-hour average NO_X and PM_{10} emissions rates from 2016–2018 are less than the modeled emissions rates. In addition, Table 9 compares the annual 2001–2003 baseline emissions of SO_2, NO_X, and PM_{10} to 2016–2018 annual emissions. MDEQ concluded that the 2016–2018 annual emissions of SO_2, NO_X, and PM_{10} are less than the baseline emissions.

TABLE 8—PLANT MOSELLE MODELED 2001–2003 AND 2016–2018 MAXIMUM 24-HOUR EMISSIONS RATES

Emissions period (date)	Maximum 24-hour emissions rates emissions (lb/hr) (2001–2003)			Maximum 24-hour emissions rates emissions (lb/hr) (2016–2018)		
	SO_2	NO_X	PM_{10}	SO_2	NO_X	PM_{10}
Unit 3	0.24	245.25	6.50	0.25	217.25	3.21

[40] A copy of the Acid Rain and CSAPR Trading Programs Retired Unit Exemption Form is located in Appendix L.4.2 of the draft BART SIP.

TABLE 9—PLANT MOSELLE BASELINE (2001–2003) AND CURRENT (2016–2018) PERIOD ANNUAL EMISSIONS COMPARISON

Year	Annual emissions (tons)		
	SO_2	NO_X	PM_{10}
2001	0.85	249.56	6.59
2002	0.63	317.39	7.80
2003	0.56	344.65	6.93
2016	0.11	56.35	1.37
2017	0.09	43.42	1.14
2018	0.11	58.79	1.36

MDEQ concluded that Plant Moselle is not subject to BART, and no further BART analysis is required because the 98th percentile 24-hour average visibility impact of 0.05 dv is well below the State's 0.5 dv contribution threshold for BART, 2016–2018 annual emissions of SO_2, NO_X, and PM_{10} have declined from 2001–2003 levels, and maximum 24-hour emissions rates of SO_2, NO_X and PM_{10} have remained equivalent to (SO_2) or declined (NO_X and PM_{10}) since the 2001–2003 baseline period modeled.

7. Mississippi Power Company—Plant Watson Units 4 and 5

Plant Watson Units 4 and 5, located in Gulfport, Mississippi, and owned and operated by Mississippi Power Company, have been identified by MDEQ as being BART-eligible. Plant Watson is 45 km from Breton. Plant Watson is an electric generating facility that has two natural-gas fired units (Units 4 and 5). These units were previously capable of firing coal and fuel oil. Plant Watson conducted CALPUFF modeling in 2012 for Units 4 and 5 using CALPUFF Version 5.8 Level 070623 and assuming that these units would convert to firing only natural gas. The modeling analysis demonstrated a maximum 98th percentile 24-hour average visibility impact of 0.48 dv over the three years modeled, and a 22nd highest day's visibility impact over all three years of 0.46 dv. Since the 2012 CALPUFF modeling was conducted, Units 4 and 5 were modified in 2015 by removing all liquid burning equipment and dismantling the coal handling systems. Now both units are physically limited to burn natural gas only.[41] Although the 2012 modeled values are below the State's contribution threshold for sources that are subject to BART, these changes at Plant Watson reduced annual emissions of visibility-impairing pollutants such that the source elected to model using more recent emissions. On behalf of Mississippi Power Company, Southern Company Services performed updated CALPUFF modeling on Units 1 and 2 using current emissions (*i.e.,* 2017–2019) and the current EPA-approved version of CALPUFF. The modeling analysis predicted a maximum annual 98th percentile 24-hour average visibility impact of 0.44 dv over the three years modeled, and a 22nd highest day's visibility impact over all three years of 0.41 dv. MDEQ concluded that Plant Watson's Units 4 and 5 are not subject to BART, and thus, no further BART analysis is required because the 98th percentile 24-hour average visibility impact of 0.44 dv is below the State's 0.5 dv contribution threshold for BART.

B. EPA's Evaluation of Mississippi's BART SIP

1. Overview

EPA proposes to find that the draft BART SIP corrects the deficiencies arising from Mississippi's prior reliance on CAIR to meet certain regional haze requirements that resulted in EPA's limited disapproval of Mississippi's regional haze plan. Because this was the sole deficiency leading to EPA's prior limited disapproval, the Agency is also proposing to withdraw that limited disapproval and to fully approve the State's regional haze SIP.

As discussed above, Plant Morrow's BART-eligible Units 1 and 2 permanently retired in 2018, and EPA therefore proposes to approve the State's finding that this source is exempt from further BART analysis. The remaining six facilities all modeled below the State's BART contribution threshold of 0.5 dv. As explained previously, modeling for four facilities (Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle) was conducted in the early 2010s with earlier versions of CALPUFF. For these facilities, EPA evaluated potential impacts of changes to the CALPUFF modeling system, and, as discussed in Section III.B.2, EPA believes that the modeling system changes do not significantly affect the modeling results for these sources. In addition, EPA agrees with the State's analyses of the modeling results and the supplemental emissions analyses, as discussed in Section III.B.3, below. Thus, EPA proposes to approve the State's determination that Baxter Wilson, Gerald Andrus, Plant Chevron, Plant Daniel, Plant Moselle, and Plant Watson are not subject to BART, and no further BART analysis is required of these sources.

2. Assessment of CALPUFF Modeling System Changes

MDEQ opted to rely on existing BART exemption modeling for four sources, Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle, which utilized older versions of the CALPUFF modeling system. For this reason, EPA assessed whether the updates to the CALPUFF modeling system could affect the modeling results for these four sources such that they would become subject to BART. EPA first considered the changes to the CALPUFF modeling system and an earlier analysis prepared by an EPA contractor, and found that these changes are generally unlikely to result in significant differences in modeled visibility impacts. Second, EPA analyzed Plant Watson's modeling results under both the current CALPUFF model and the older version of the model used by Baxter Wilson, Gerald Andrus, and Plant Moselle. This analysis accounts for the significant similarities between the emissions profiles of Plant Watson and the other plants, and further corroborates that using the updated CALPUFF model is unlikely to result in the other plants becoming subject to BART. Thus, EPA proposes to find that it is not necessary

[41] In an April 9, 2015, letter to MDEQ, Mississippi Power Company requested a modification to its title V permit for Plant Watson to reflect actions to render Units 4 and 5 incapable of combusting any solid or liquid fuels. These activities included the removal of liquid fuel burning equipment and the permanent dismantlement of the coal handling system. MDEQ issued a revised title V permit and acid rain permit on December 29, 2016. These documents are located in the docket for this proposed action for informational purposes.

to remodel Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle using the current EPA-approved version of CALPUFF.

CALPUFF Modeling System Versions Used for Mississippi's BART-Eligible Sources

The initial BART exemption modeling utilized CALPUFF and CALMET Version 5.8 Level 070623 for all sources except Plant Chevron, which utilized CALPUFF version 5.754 Level 060202 and CALMET version 5.7. The EPA-approved version of the CALPUFF modeling system has since been updated to Version 5.8.5 Level 151214.[42] Specific updates to the CALPUFF and CALMET models since Version 5.8 are summarized below:

- December 4, 2013—CALPUFF and CALMET updated from Version 5.8 to Version 5.8.4 Level 130731. Changes are described in Model Change Bulletins E, F, and G.[43] This update included bug fixes only and no enhancements or new features.
- July 26, 2016—CALPUFF and CALMET updated to Version 5.8.5 Level 151214 which is the current EPA-approved version of the models. This was the version of CALUFF used in revised modeling for Plants Watson and Daniel. Changes are described in Model Change Bulletin H.[44] This update included program fixes to the PRIME downwash algorithm along with updates to eliminate specific compilation and list file errors.

A December 3, 2013, memorandum prepared by an EPA contractor summarized the changes to the CALPUFF modeling system described in Model Change Bulletins E, F, and G, and the potential effect of those changes on predicted pollutant impacts for several scenarios and source types.[45] This memorandum broadly concluded that the changes to the CALPUFF modeling system resulted in no difference, or almost no difference (+/− 1 percent (%)), in predicted values for most scenarios and source types evaluated.

In addition to the differences in CALPUFF versions, three sources (Baxter Wilson, Gerald Andrus, and Plant Chevron) used Version 6.292 Level 110406 of the CALPOST processor (one of the components of the CALPUFF modeling framework), while four sources (Plant Daniel, Plant Morrow, Plant Moselle, and Plant Watson) used Version 6.221 Level 080724. Use of either version of CALPOST is consistent with EPA policy in this context.[46]

Further Evaluation of CALPUFF Model Changes at Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle

EPA also performed a specific assessment of the potential impacts of these updates to the EPA-approved version of the CALPUFF modeling system on the visibility results for Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle. Because the emissions profile and visibility impact for Plant Watson is similar to these four sources, and Plant Watson also used an earlier version of CALPUFF, EPA analyzed Plant Watson modeling information using the earlier and current versions of CALPUFF as a point of comparison to illustrate the effect of the CALPUFF model changes. Emissions from Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle were all dominated primarily by NO_X and secondarily by PM_{10}, similar to Plant Watson. The predicted visibility impacts from these five facilities on the nearest Class I areas were dominated by NO_X emissions, accounting for 86% of the visibility impacts from Plant Watson and 90% to 98% of the visibility impacts from the remaining facilities.[47] The magnitude of NO_X emissions from Baxter Wilson, Gerald Andrus, and Plant Watson are greater than the magnitude of NO_X emissions from Plants Chevron and Moselle. With the noted similarities in the emissions profiles and predicted visibility impacts in the initial modeling performed for these facilities, the updated modeling performed for Plant Watson using the current EPA-approved version of CALPUFF and recent emissions data provides insight on the potential effects of updates to the CALPUFF modeling system on predicted visibility impacts for Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle.

The modeling performed for Plant Watson in 2020 using 2017–2019 emissions data and the current EPA-approved version of CALPUFF indicated similar visibility impacts as those predicted by the 2012 modeling: 91% of the visibility impacts at Breton due to the facility are the result of NO_X emissions, 8% of the visibility impacts are the result of PM_{10} emissions, and only 1% of the visibility impacts are the result of SO_2 emissions. A comparison of emissions utilized in the initial modeling for Plant Watson compared to the emissions utilized in the revised modeling for Plant Watson is presented in Table 10 along with the contribution to visibility impacts from each pollutant.

TABLE 10—EMISSIONS RATES MODELED AND VISIBILITY IMPACTS FOR PLANT WATSON

Pollutant	2012 Modeling contribution to visibility impacts (%)	2020 Modeling contribution to visibility impacts (%)	2012 Modeling emissions rate (lb/hr)	2020 Modeling emissions rate (lb/hr)	Change in 2012 to 2020 modeled emissions rates (%)
SO_2	1	1	4.99	4.08	−18
NO_X	86	91	2,491.39	2,141.34	−14
PM_{10}	13	8	62.32	66.94	+7

[42] *See* EPA, CALPUFF Modeling System, available at: *https://www3.epa.gov/ttn/scram/7thconf/calpuff/Previous_SCRAM_CALPUFF_Posting_Reference.pdf.*

[43] Bulletins E, F, and G are available at *https://www3.epa.gov/ttn/scram/models/calpuff/calpuff_mcb_e.txt*, *https://www3.epa.gov/ttn/scram/models/calpuff/calpuff_mcb_f.txt*, and *https://www3.epa.gov/ttn/scram/models/calpuff/calpuff_mcb_g.txt*, respectively.

[44] *https://www3.epa.gov/ttn/scram/models/calpuff/calpuff_mcb_h.txt.*

[45] AMEC, AERMOD Technical Assistance—Modification of CALPUFF and CALMET Final Report (December 3, 2013), available at: *https://www3.epa.gov/ttn/scram/models/calpuff/CALPUFF_Update_Memo_12032013.pdf.*

[46] This context refers to calculating visibility using the new IMPROVE equation through CALPOST Method 8. *See* p.71 of the November 2012 Plant Watson modeling report (Appendix B). This modeling report is included in the docket for this rulemaking. The IMPROVE Equation is available at: *http://npshistory.com/publications/air-quality/flag-2010.pdf.*

[47] Breton is the nearest Class I area for Plant Watson, Baxter Wilson, Plant Chevron, and Plant Moselle, and Caney Creek is the nearest Class I area for Gerald Andrus.

The 2017–2019 emissions rates used in the 2020 BART exemption modeling for Plant Watson changed relative to the 2003–2005 emissions rates used in the source's initial 2012 modeling as follows: NO_X emissions decreased by 14%; PM_{10} emissions increased by 7%; and SO_2 emissions decreased by 18%; in addition, SO_2 emissions remained substantially lower than NO_X and PM_{10} emissions.

The 2020 modeling for Plant Watson indicated that the maximum 98th percentile 24-hour average visibility impact at Breton over the three years modeled decreased by 10% relative to the initial 2012 modeling. The 2020 modeling also indicated that the 22nd highest day's visibility impact over the three years modeled decreased by 11% relative to the initial 2012 modeling. This information is presented in Table 11. Table 11 indicates that the 10–11% reduction in predicted visibility impacts is closely correlated to the 14% reduction in the NO_X emissions rate. These results suggest that the reductions in predicted visibility impacts are primarily due to the 14% reductions in NO_X emissions rather than the updates to CALPUFF.

TABLE 11—COMPARISON OF INITIAL MODELING TO REVISED MODELING FOR PLANT WATSON

	Max 98th percentile over 3 years modeled (dv)	22nd highest day over 3 years modeled (dv)	NO_X emissions rate (lb/hr)	PM_{10} emissions rate (lb/hr)
Initial 2012 Modeling	0.482	0.457	2,491.4	62.3
Revised 2020 Modeling	0.436	0.408	2,141.3	66.9
2012 to 2020 Change (%)	−9.5%	−10.7%	−14.1%	+7.4%

The updated modeling performed for Plant Watson using the current EPA-approved version of CALPUFF and recent emissions data suggests that the updates to the CALPUFF model did not significantly affect predicted visibility impacts for Plant Watson. Instead, the predicted changes in visibility from Plant Watson between the initial and revised modeling appear to be driven by NO_X emissions reductions. With the noted similarities in the emissions profiles and predicted visibility impacts between Plant Watson and Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle, the updates to CALPUFF are also not expected to have a significant impact on predicted visibility impacts from these other facilities. Revised modeling performed with the current EPA-approved version of CALPUFF and recent emissions for these facilities would likely result in visibility impacts the same as or less than the values from the 2011/2012 modeling shown in Table 12 because recent emissions have either remained equivalent to or decreased since the 2011/2012 modeling. Therefore, the reduction in NO_X and PM_{10} emissions shown in Table 12 would suggest a corresponding decrease in visibility impact at the nearest Class I area.

TABLE 12—2011/2012 VISIBILITY MODELING RESULTS AND CHANGES IN RECENT NO_X AND PM_{10} EMISSIONS FOR BAXTER WILSON, GERALD ANDRUS, PLANT CHEVRON, AND PLANT MOSELLE

Facility	Nearest class I area	2011/2012 modeled DV impact [48]	NO_X contribution to visibility impact (%)	Percent (%) change in NO_X emissions [49]	PM_{10} contribution to visibility impact (%)	Percent change in PM_{10} emissions [50]
Baxter Wilson	Breton	0.49	96	−80	3	−58
Gerald Andrus	Caney Creek	0.15	98	−54	2	−13
Plant Chevron	Breton	0.27	90	−25	9	0
Plant Moselle	Breton	0.05	92	−11	7	−57

As previously noted, Plant Chevron used a different version of CALPUFF (Version 5.754) than Plant Watson used in its initial modeling (Version 5.8). While EPA did not specifically analyze the changes from CALPUFF Version 5.754 to 5.8 (or from 5.754 to the current version), EPA nonetheless believes that updating the modeling for Plant Chevron is not necessary. As previously shown, the updates to Version 5.8 of the CALPUFF model did not significantly affect predicted visibility impacts for Plant Watson. Instead, the predicted changes in visibility from Plant Watson between the initial and revised modeling appear to be driven by NO_X emissions reductions. If EPA assumes a similar relationship also holds true for Plant Chevron, then the Agency would expect updated modeling to show decreased visibility impact for Plant Chevron. That is, the 2011 modeling for Plant Chevron indicated a maximum 98th percentile 24-hour impact of 0.27 dv over the three years modeled, which is well below the value of 0.5 dv. The reduction in NO_X emissions shown in Table 12 for Plant Chevron would suggest a corresponding decrease in visibility impact at Breton. Specifically, if EPA assumed that any visibility impact changes would be solely due to changes in NO_X emissions, then the visibility impact of updated modeling would be approximately 0.21 dv.[51] In

[48] The maximum 98th percentile 24-hour visibility impact over the three years modeled.

[49] Percent decrease in NO_X emissions from the emissions used in the 2012 modeling to emissions that would be used in the 2020 modeling. Detailed emissions data for each of the four facilities are presented in Section III.A.

[50] Percent decrease in PM_{10} emissions from the emissions used in the 2012 modeling to emissions that would be used in the 2020 modeling. Detailed emissions data for each of the four facilities are presented in Section III.A.

[51] The basis for the estimated impact of 0.21 dv due to NO_X reductions alone is as follows. The 2011 CALPUFF modeling for Plant Chevron indicated that 90% of visibility impacts at Breton were from NO_X emissions which equates to approximately 0.243 dv (90% of the total estimated impact of 0.27 dv). The remaining 10% of visibility impacts are due to PM_{10} and SO_2 emissions which equates to approximately 0.027 dv (10% of 0.27 dv). To approximate the impact of the 25% reduction in

Continued

addition, while EPA is not aware of evidence indicating that CALPUFF Version 5.754 underpredicts visibility impacts relative to the current CALPUFF version, even were this to be true, the Agency thinks it is extremely unlikely that would cause the visibility impact to rise above 0.5 dv, given that Plant Chevron initially modeled 0.27 dv and the subsequent emission reductions at the source.

3. Evaluation of Supplemental Emissions Analyses and Operational Changes at Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle

EPA agrees with the supplemental emission analyses performed by MDEQ for Baxter Wilson, Gerald Andrus, Plant Chevron and Plant Moselle.

Baxter Wilson

Even though the 2012 modeling for Baxter Wilson indicated visibility impacts below but near the 0.5 dv threshold (0.49 dv), there have been operational changes that have significantly reduced the emissions from this facility, including the shutdown of the larger of the two units at this facility. These changes have resulted in substantial reductions in both annual and maximum 24-hour emissions of SO_2, NO_X, and PM_{10} relative to the baseline period modeled as shown in Tables 4 and 5.

Gerald Andrus

The 2012 modeling for the Gerald Andrus indicated visibility impacts of 0.15 dv, which is well below the 0.5 dv threshold. As shown in Table 6 above, recent maximum 24-hour emissions rates of SO_2 are essentially the same as those modeled in 2012 while NO_X and PM_{10} maximum 24-hour emissions rates have decreased substantially. Overall the recent annual emissions of SO_2, NO_X, and PM_{10} have drastically reduced at Gerald Andrus as shown in Table 7.

Plant Chevron

The 2011 modeling for Plant Chevron indicated visibility impacts of 0.27 dv, which is well below the 0.5 dv threshold. While recent annual emissions of SO_2 have increased relative to the baseline period modeled, the magnitude of the facility's current maximum 24-hour SO_2 emissions rate remains relatively low (8 lb/hr) compared to its NO_X emissions rates (420 lb/hr) for all four units combined (see Table 2), and CALPUFF predicted that visibility impacts from Chevron were dominated by NO_X emissions. During the same period, maximum 24-hour NO_X emissions rates have decreased by about 25% while PM_{10} maximum 24-hour emissions rates are essentially unchanged.

Plant Moselle

The 2011 modeling for Plant Moselle indicated visibility impacts of 0.05 dv which is well below the 0.5 dv threshold. As shown in Table 8 above, recent maximum 24-hour emissions rates of NO_X, SO_2, and PM_{10} are equivalent to or less than those modeled in 2011.

Based on the State's submission and EPA's analysis in this section and Section III.B.2, EPA proposes to approve MDEQ's finding that the four facilities (*i.e.,* Baxter Wilson, Gerald Andrus, Plant Chevron, and Plant Moselle) remain exempt from further BART review.

4. Evaluation of Updated Modeling at Plant Daniel and Plant Watson

Plant Daniel and Plant Watson have updated BART exemption modeling using current emissions of SO_2, NO_X, and PM to reflect the emissions changes as a result of the operational changes at each plant. The updated BART exemption modeling also used a newer version of CALPUFF, which is the current EPA-approved version. EPA believes the updated modeling analyses for Plant Daniel and Plant Watson properly reflect additional emissions controls and operational changes that have reduced emissions since the original modeling was conducted. For both facilities, the updated modeling shows that the two facilities model below the BART contribution threshold. Therefore, EPA proposes to approve MDEQ's finding that these facilities are also exempt from further BART review.

5. Federal Land Manager (FLM) Review

MDEQ provided the draft BART SIP to the FLMs to review in accordance with 40 CFR 51.308(i)(2), and the FLMs have not provided any comments. MDEQ's draft BART SIP references the procedures for continuing consultation between the State and FLMs on the implementation of the State's visibility protection program in accordance with 40 CFR 51.308(i)(4) that are contained in Section 11 of the State's September 22, 2008, regional haze plan.[52] These procedures remain in effect for the draft BART SIP.

6. Summary

In summary, EPA proposes to approve the draft BART SIP and finds that it corrects the deficiencies that led to the limited approval and limited disapproval of the State's regional haze SIP; to withdraw the limited disapproval of Mississippi's regional haze SIP; and to fully approve Mississippi's regional haze SIP as meeting all regional haze requirements of the CAA for the first implementation period, replacing the prior limited approval.

IV. Summary and EPA's Evaluation of Mississippi's Progress Report and Adequacy Determination

A. Regional Haze Progress Report

This section includes EPA's analysis of Mississippi's Progress Report and an explanation of the basis for the Agency's proposed approval. EPA cannot take final action to approve Mississippi's Progress Report unless the Agency finalizes its proposal to approve the draft BART SIP because the existing regional haze SIP contains a deficiency in its current strategy to achieve RPGs.

1. Control Measures

In its Progress Report, Mississippi summarizes the status of the emissions reduction measures that were relied upon by the State in its regional haze plan. The measures include, among other things, applicable federal programs (*e.g.,* federal consent agreements, federal control strategies for EGUs, Maximum Achievable Control Technology standards, and mobile source rules). Additionally, MDEQ highlighted control programs and measures that were not relied upon in its regional haze plan which provide further assurances that visibility impacts from Mississippi's sources are addressed (*e.g.,* EPA's MATS Rule and measures taken by certain sources to address the 2010 1-hour SO_2 NAAQS). In the Progress Report, MDEQ also reviewed the status of BART requirements for the non-EGU BART-subject sources in the State—Chevron Pascagoula Refinery (Chevron Refinery) and Mississippi Phosphates Corporation (MPC)—both located in Pascagoula, Mississippi, and notes that it will address BART for the aforementioned BART-eligible EGUs in a separate SIP submittal.[53]

NO_X emissions from Plant Chevron, EPA decreased the portion of the visibility impacts due to NO_X emissions (0.243 dv) by 25% (0.243 * (1 − 0.25) = 0.182 dv). The PM_{10} and SO_2 portion of the visibility impacts remains at 0.027 dv. Thus, the revised estimated total visibility impact from Plant Chevron on Breton is 0.21 dv (0.182 + 0.027 = 0.209 dv (rounded to 0.21)).

[52] The draft BART SIP references Section 10, but EPA believes the State meant to refer to Section 11.

[53] Subsequent to submittal of the Progress Report, Mississippi addressed EGU BART in its draft BART SIP, which is discussed in Section III of this notice.

As discussed in Section II of this notice, a number of states, including Mississippi, submitted regional haze plans that relied on CAIR to meet certain regional haze requirements. EPA finalized a limited disapproval of Mississippi's regional haze plan due to this reliance on CAIR. In its draft BART SIP, Mississippi determined that none of its seven BART-eligible facilities with EGUs formerly subject to CAIR are subject to BART.

Mississippi's draft BART SIP explains the status of each BART-eligible EGU formerly subject to CAIR. Table 1 identifies the 14 BART-eligible units (located at seven facilities) and the highest modeled impact at the nearest Class I area for each facility. Section III of this notice explains the status of each BART-eligible EGU in greater detail.

In the State's regional haze plan and Progress Report, Mississippi focuses its assessment on SO_2 emissions from coal-fired boilers at EGUs and industrial boilers because of VISTAS' findings that ammonium sulfate accounted for 69–87% of the visibility-impairing pollution in all of the VISTAS states, except one coastal area, based on 2000 to 2004 data. The emissions sensitivity analyses conducted by VISTAS predicted that reductions in SO_2 emissions from EGU and non-EGU industrial point sources would result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Thus, Mississippi concluded that reducing SO_2 emissions from EGU and non-EGU point sources would have the greatest visibility benefits for the Class I areas impacted by Mississippi sources.[54]

Because many states had not yet defined their criteria for identifying sources to evaluate for reasonable progress at the time Mississippi was developing its September 22, 2008, regional haze plan, Mississippi initially applied its criteria for identifying emissions units eligible for a reasonable progress control analysis as a screening tool to identify Class I areas outside of the State potentially impacted by Mississippi sources.[55] Mississippi only identified SO_2 emissions from E.I. DuPont Delisle (DuPont) and Plant Watson as potentially impacting visibility at Breton in Louisiana for reasonable progress during the first implementation period.[56] However, when Louisiana completed its reasonable progress assessments and finalized its regional haze SIP submittal, it did not identify any Mississippi sources as impacting Breton using Louisiana's evaluation criteria. Thus, MDEQ concluded, and EPA agreed, that no further evaluation of Dupont and Plant Watson was needed for reasonable progress and MDEQ updated its 2008 regional haze plan in the May 9, 2011, amendment with this conclusion.[57]

EPA proposes to find that Mississippi has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding the implementation status of control measures because the State described the implementation of measures within Mississippi, including BART for NO_X, SO_2, and PM at its BART-subject sources for non-EGUs in its Progress Report and for EGUs in its draft BART SIP.

2. Emissions Reductions

As discussed in Section IV.A.1. of this notice, Mississippi focused its assessment in its regional haze plan and Progress Report on SO_2 emissions from coal-fired boilers at point sources in Mississippi because of VISTAS' findings that ammonium sulfate is the primary component of visibility-impairing pollution in the VISTAS states based upon 2000 to 2004 data.[58] In its Progress Report, MDEQ provides a bar graph with Mississippi's EGU SO_2 emissions from 2002 to 2017 and states that these emissions have decreased from 65,741 tons in 2002 to 2,569 tons in 2017. MDEQ notes that these emissions are trending downward overall, with significant decreases from 2014 to 2016 (following increases in 2013 and 2014 due to emissions from Plant Watson) and consistently low values in 2016 and 2017 due to the conversion of Plant Watson from coal to natural gas in 2015.[59]

Mississippi includes cumulative VOC, $PM_{2.5}$, PM_{10}, SO_2, and NO_X emissions data from 2002, 2007, and 2014 for EGUs and non-EGUs in the State, along with the 2018 emissions projections from its 2008 regional haze plan. The 2007 actual emissions data were developed through the Southeastern Modeling, Analysis and Planning (SEMAP) partnership. At the time of Progress Report development, the 2014 National Emissions Inventory (NEI) was the latest available inventory.[60] EPA's NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources that is updated every three years using information provided by the states and other information available to EPA.[61]

According to MDEQ, EGU emissions are near or below the 2018 projections for all pollutants except SO_2. As noted in Section III.A.7., Plant Watson converted from coal to natural gas in 2015, and the source's SO_2 emissions dropped from 70,667 tons in 2014 to 5.1 tons in 2017 and 4.6 tons in 2018. MDEQ notes that this change in emissions from 2014 to 2018 at Plant Watson brings the State's EGU SO_2 emissions closer to the 2018 value of 15,213 tons projected in the regional haze plan (see Table 13).[62] The emissions reductions identified by Mississippi are due, in part, to the implementation of measures included in the State's regional haze plan.

Since the time of SIP development and submission, more recent emissions data has become available for Mississippi's EGUs and non-EGUs from the 2017 NEI, which are reflected in Tables 13 and 14. For Mississippi's EGUs, actual emissions from the NEI for 2017 are below the 2018 projected emissions shown in Table 13 for all pollutants except VOC and NO_X. Of particular note is that 2017 actual SO_2 emissions of the State's EGUs are well below (2,877 tpy) the 2018 projected value of 15,213 tpy of SO_2.

[54] *See* 77 FR 11887 (February 28, 2012).

[55] As noted earlier, Breton in Louisiana, Sipsey in Alabama, and Caney Creek in Arkansas are the closest Class I areas to Mississippi. With respect to reasonable progress, Louisiana, Alabama, and Arkansas did not identify any Mississippi sources as having an impact on the visibility at Breton, Sipsey, and Caney Creek, respectively.

[56] *See* 77 FR 11888 (February 28, 2012). *See also* page 14 of the Progress Report.

[57] *See* 77 FR 11888 (February 28, 2012).

[58] The Progress Report also documents that sulfates continue to be the biggest single contributor to regional haze at Breton. *See* Section IV.A.5 for additional information.

[59] The Progress Report identifies Plant Watson as ''Watson Electric'' on page 10 in Figure 1 and in the associated note. The Progress Report notes that Plant Watson converted to natural gas in 2014 on page 16; the correct date is 2015 as stated on page 10.

[60] *See* EPA's website for additional data and documentation for the 2014 version of the NEI (*https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data*).

[61] EPA's NEI is available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory*.

[62] Progress Report, page 11, Table 3.

TABLE 13—EGU EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[tpy]

Year/source	VOC	NO_X	$PM_{2.5}$	PM_{10}	SO_2
2002 (VISTAS)	648	43,135	1,138	1,633	67,429
2007 (SEMAP)	669	48,150	1,426	2,165	75,563
2014 (NEI)	349	21,686	1,829	2,359	90,733
2018 (Projected)	1,274	21,535	7,252	7,412	15,213
2017 (NEI)	2,515	30,214	2,752	3,213	2,877

Emissions from the State's non-EGU point sources are below the 2018 emissions projections for all pollutants as shown in Table 14.

TABLE 14—NON-EGU EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[tpy]

Year/source	VOC	NO_X	$PM_{2.5}$	PM_{10}	SO_2
2002 (VISTAS)	43,204	61,526	9,906	19,472	35,960
2007 (SEMAP)	33,917	50,033	7,305	10,203	19,415
2014 (NEI)	28,885	31,761	9,363	10,769	13,450
2018 (Projected)	45,335	61,252	10,719	22,837	25,674
2017 (NEI)	24,840	13,498	6,226	7,376	5,500

Emissions data for 2018 has also become available for the State's EGUs since the time that Mississippi submitted its Progress Report, and EPA notes that Mississippi's EGUs emitted 3,189.7 tons of SO_2 in 2018,[63] well below the projected 2018 value.

In the Progress Report, MDEQ also detailed emissions reductions at the State's two non-EGU BART-subject sources, Chevron Refinery and MPC. In the State's regional haze plan, Chevron Refinery and MPC modeled visibility impacts at Breton of 3.89 dv and 0.81 dv, respectively. To satisfy a 2005 consent decree, Chevron Refinery installed numerous controls on its units by 2008 which resulted in a modeled visibility improvement of 2.99 dv at Breton.[64] With respect to MPC, the Progress Report summarized the upgrades made at the source under a November 9, 2010, Permit to Construct Air Emissions Equipment that included Best Available Control Technology emissions limits for SO_2 and sulfuric acid mist. The facility filed for bankruptcy on October 24, 2014, fully ceased operations in December of 2014, and has been permanently shut down and declared a Superfund site.[65]

Based on the information provided in the Progress Report, EPA proposes to find that Mississippi has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding emissions reductions.

3. Visibility Conditions

40 CFR 51.308(g)(3) requires that states with Class I areas within their borders provide information on current visibility conditions and the difference between current visibility conditions and baseline visibility conditions expressed in terms of five-year averages of these annual values. Because there are no Class I areas in Mississippi, the State is not required to provide an assessment of visibility conditions under 40 CFR 51.308(g)(3) as noted in the Progress Report.

4. Emissions Tracking

In its Progress Report, Mississippi presents EGU SO_2 emissions data (from 2002 to 2017), and data from statewide actual emissions inventories for 2007 (SEMAP) and 2014 (NEI) and compares these data to the baseline emissions inventory for 2002 (actual emissions) and the projected emissions for 2018 from the State's regional haze plan. These emissions inventories, shown in Tables 15–18 include the following source classifications: Point, area, biogenic (*e.g.,* VOC from vegetation, emissions from fires), non-road mobile, and on-road mobile sources. The pollutants inventoried for these categories are VOC, NO_X, $PM_{2.5}$, PM_{10}, NH_3, and SO_2.

The 2014 emissions for VOC, NO_X, and NH_3 are all below the projected 2018 emissions for these pollutants. The increases in total PM_{10} and $PM_{2.5}$ from 2007 to 2014 (shown in Tables 16 and 17) are due to different methodologies for these years in calculating unpaved road emissions in the emission inventories. MDEQ notes that according to data from the Mississippi Department of Transportation, the number of miles of unpaved roads in the State have decreased from 22,547 miles in 2006 to 18,857 miles in 2014. The increase in SO_2 emissions from 105,657 tons in 2007 to 108,429 tons in 2014 was due to emissions from Plant Watson prior to the source converting to natural gas in 2015. As noted in Section IV.A.2, the overall SO_2 emissions from EGUs decreased substantially following this conversion.

[63] Mississippi's EGUs emitted 13,041.3 tons of NO_X in 2018. *See* EPA's Air Markets Program Data website, located at: *https://ampd.epa.gov/ampd/.*

[64] *See* Progress Report, pp. 13–14 and the 2005 consent decree in *U.S.* v. *Chevron,* available at: *https://www.epa.gov/sites/production/files/documents/chevron-cd.pdf.* Table 6 of the Progress Report identifies emissions reductions from the BART-eligible units covered by the consent decree.

[65] For more information on MPC as a Superfund site, see *https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0403508#bkground.*

TABLE 15—2002 ACTUAL EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[tpy]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	43,852	104,661	11,044	21,106	1,359	103,389
Area	131,808	4,200	50,401	343,377	58,721	771
On-Road Mobile	86,811	110,672	2,089	2,828	3,549	4,566
Nonroad Mobile	41,081	88,787	4,690	5,010	23	11,315
Biogenic	1,544,646	20,305	0	0	0	0
Fires	13,621	3,326	13,763	14,686	177	99
Total	1,861,820	331,952	81,896	387,007	63,829	120,139

TABLE 16—2007 ACTUAL EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[tpy]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	34,586	98,183	8,731	12,368	1,640	94,978
Area	74,755	6,091	42,758	326,350	58,774	344
On-Road Mobile	4,516	117,225	4,061	5,030	1,809	920
Nonroad Mobile	35,315	48,321	3,105	3,308	35	3,088
Biogenic	1,544,646	20,305	0	0	0	0
Fires	178,431	12,454	66,621	78,612	12,413	6,327
Total	1,872,249	302,579	125,276	425,668	74,671	105,657

TABLE 17—2014 ACTUAL EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[tpy]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	29,234	53,477	11,192	13,128	2,891	104,183
Area	47,959	19,504	122,136	977,608	64,986	951
On-Road Mobile	28,852	72,763	2,336	4,438	1,428	399
Nonroad Mobile	22,408	14,631	1,434	1,510	23	34
Biogenic	1,515,263	14,157	0	0	0	0
Fires	69,792	6,156	26,913	31,758	4,855	2,863
Total	1,713,509	180,658	164,012	1,028,442	74,184	108,429

TABLE 18—2018 PROJECTED EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[tpy]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	46,452	71,804	17,172	30,046	1,591	54,367
Area	140,134	4,483	53,222	375,495	69,910	746
On-Road Mobile	31,306	30,259	810	1,607	4,520	435
Nonroad Mobile	28,842	68,252	3,203	3,452	29	6,683
Biogenic	1,544,646	20,305	0	0	0	0
Fires	14,747	3,840	15,669	17,013	285	240
Total	1,806,127	198,943	90,076	427,613	76,335	62,471

As discussed in Section IV.A.2, the Progress Report also contains other emissions data, including a figure displaying Mississippi's EGU SO_2 emissions from 2002 to 2017 and two tables summarizing EGU and non-EGU actual emissions data for 2002, 2007, and 2014, along with the 2018 emissions projections for the State's regional haze plan (see Tables 13 and 14 of this notice). MDEQ states that EGU SO_2 emissions have decreased from 65,741 tons in 2002 to 2,569 tons in 2017.

EPA is proposing to find that Mississippi adequately addressed the provisions of 40 CFR 51.308(g) regarding emissions tracking because the State compared the most recent updated emission inventory data at the time of SIP development with the baseline emissions used in the modeling for the regional haze plan. Furthermore, Mississippi evaluated EPA Air Markets Program Data [66] SO_2 emissions data from 2002–2017 for EGUs in the State because ammonium sulfate is the primary component of visibility-impairing pollution in the VISTAS states and EGUs are the largest source of SO_2 in the State.

[66] EPA Air Markets Program Data is available at: *https://ampd.epa.gov/ampd/.*

5. Assessment of Changes Impeding Visibility Progress

In its Progress Report, Mississippi documented that sulfates, which are formed from SO_2 emissions, continue to be the biggest single contributor to regional haze for Breton, and therefore focused its analysis on large SO_2 emissions from point sources.[67] In its September 22, 2008, regional haze SIP submittal, Mississippi notes that ammonium sulfate is the largest contributor to visibility impairment for Class I in the southeastern United States based upon 2000 to 2004 data, and that reducing SO_2 emissions would be the most effective means of reducing ammonium sulfate.[68] In addressing the requirements at 40 CFR 51.308(g)(5), Mississippi shows in the Progress Report that the overall contribution of sulfates toward visibility impairment at Breton [69] over the 2008–2012 period is 66% for the 20 percent haziest days and 54 percent for the 20 percent clearest days. Although the State concludes that sulfates continue to be the major component to visibility impairment at Breton, it also examines other potential pollutants of concern affecting visibility at this Class I area. Furthermore, the Progress Report shows that SO_2 emissions reductions from 2002–2017 for EGUs in Mississippi overall are decreasing, and with the conversion of Plant Watson to natural gas in 2015, are estimated to well exceed the projected emission reductions from 2002–2018 in the State's regional haze plan.

MDEQ summarized the changes in emissions from 2002 to 2014, the latest complete emissions inventory for all source categories in the State. For VOC, NH_3, and NO_X, the actual emissions decreased from 2002 to 2014. For SO_2, total emissions in the State decreased from 2002, with a slight increase from 2007, due to the point source category. MDEQ explains that the increase in SO_2 emissions was due to emissions from Plant Watson which, as noted previously, converted from coal to natural gas in 2015 and emitted 5.1 tons and 4.6 tons of SO_2 in 2017 and 2018, respectively.[70] For $PM_{2.5}$ and PM_{10}, increases in statewide $PM_{2.5}$ and PM_{10} emissions occurred from 2002 to 2014 due to increases in area source emissions for these pollutants. The increase in 2014 is due to an increase in the unpaved road dust category created by different methodologies used to calculate unpaved road emissions over the years. MDEQ notes that according to data from the Mississippi Department of Transportation, the number of miles of unpaved roads in the State have decreased from 22,547 miles in 2006 to 18,857 miles in 2014. Thus, MDEQ concludes that here have been no emissions changes that would impede progress and no significant changes in anthropogenic emissions within the State that have limited or impeded progress over the review period.

EPA proposes to find that Mississippi has adequately addressed the provisions of 40 CFR 51.308(g) regarding an assessment of significant changes in anthropogenic emissions for the reasons discussed in this section.

6. Assessment of Current Strategy

Mississippi believes that its regional haze plan is sufficient to enable potentially impacted Class I areas to meet their RPGs. MDEQ based this conclusion on the data provided in the Progress Report, including the emissions reductions of visibility-impairing pollutants from EGU and non-EGU point sources achieved in the State (summarized in Section IV.A.2).[71]

Mississippi asserts that it consulted with other states during the development of its regional haze plan for reasonable progress, including Alabama and Louisiana, and that these states indicated that Mississippi sources have no impact on the visibility at Sipsey in Alabama and at Breton in Louisiana, respectively. As discussed above, MDEQ assessed the particle speciation data for Breton indicating that sulfates continue to be the dominant contributor to regional haze in this area.

EPA proposes to find that Mississippi has adequately addressed the provisions of 40 CFR 51.308(g) regarding the strategy assessment. In its Progress Report, Mississippi assesses the particle speciation data at Breton and affirms that the focus of the State's regional haze plan on addressing SO_2 emissions in the State continues to be most effective strategy to improve visibility at Breton. Mississippi documents the overall downward emissions trends in key pollutants, with a focus on SO_2 emissions from EGUs in the State and determined that its regional haze plan is sufficient to enable Class I areas outside the State potentially impacted by the emissions from Mississippi to meet their RPGs.[72] EPA's proposed approval of the strategy assessment is also based on the fact that CAIR was in effect in Mississippi through 2014, providing some of the emission reductions relied upon in Mississippi's regional haze plan through that date; the implementation of CSAPR, which by the end of the first regional haze implementation period, reduced emissions of NO_X from EGUs formerly subject to CAIR in Mississippi; and the significant reductions of SO_2 from EGUs formerly subject to CAIR in the State due to retirements, emissions controls, and permanent conversions to natural gas as described in Section III.A.

7. Review of Current Monitoring Strategy

EPA notes that the primary monitoring network for regional haze nationwide is the IMPROVE network, which monitors visibility conditions in Class I areas. The Visibility Information Exchange Web System (VIEWS) [73] website has been maintained by VISTAS and the other regional planning organizations to provide ready access to the IMPROVE data and data analysis tools.

In its Progress Report, Mississippi states that no modifications to the existing monitoring network are necessary because it has no Class I areas and thus no monitoring strategy. EPA proposes to find that Mississippi has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding the monitoring strategy because the State has no Class I areas.

B. Determination of Adequacy of the Existing Regional Haze Plan

In its Progress Report, MDEQ submitted a negative declaration to EPA that the existing regional haze plan requires no further substantive revision at this time to achieve the RPGs for Class I areas potentially impacted by the State's sources. The State's negative declaration is based on the findings from the Progress Report, including the findings that: Actual emissions reductions of visibility-impairing

[67] See Figures 2 and 3 in the Progress Report.

[68] See page 15 of Mississippi's September 22, 2008, regional haze SIP narrative.

[69] While Mississippi does not have any Class I areas, MDEQ reviewed particle speciation data for Breton because it is the closest Class I area.

[70] As noted in Section IV.A.2, the conversion of Plant Watson from coal to natural gas in 2015 contributed to significant SO_2 emissions decreases. In addition, 2017 Mississippi EGU SO_2 emissions were 3,841 tons, which are well below the 2018 projected 15,213 tons shown in Table 13 of section IV.A.2 of this rulemaking.

[71] See Tables 3 and 4 on page 11 of the Progress Report which are reproduced as Tables 13 and 14 in this notice, with the addition of ''2017 (NEI)'' emissions to Tables 13 and 14.

[72] Visibility conditions for 2009–2013 are below the 2018 RPGs for Sipsey in Alabama. *See* 83 FR 64797, 64800 (December 18, 2018). For Caney Creek, visibility conditions for 2012–2016 are below the revised 2018 RPG for the 20 percent worst days and below 2000–2004 baseline conditions for the 20 percent best days. *See* 84 FR 11697, 11707 (March 28, 2019).

[73] The VIEWS website is located at: *http://views.cira.colostate.edu/fed/SiteBrowser/Default.aspx?appkey=SBCF_VisSum.*

pollutants in 2014 from EGUs and non-EGUs in Mississippi exceed the predicted reductions in MDEQ's regional haze plan with the exception of SO_2 for EGUs;[74] additional EGU control measures not relied upon in the State's 2008 regional haze plan have occurred during the first implementation period that have further reduced SO_2 emissions; and the State's expectation that emissions of SO_2 from EGUs in Mississippi are expected to continue to trend downward.

EPA proposes to conclude that Mississippi has adequately addressed 40 CFR 51.308(h) because the emissions trends of the largest emitters of visibility-impairing pollutants in the State indicate that the RPGs for any Class I areas in other states potentially impacted by Mississippi sources will be met and because MDEQ submitted the draft BART SIP which, if finalized, would correct the deficiencies in the regional haze plan that led to the limited disapproval. As previously noted, EPA is simultaneously proposing to approve a SIP revision to address certain BART determinations for 14 EGUs. EPA cannot take final action to approve Mississippi's declaration under 40 CFR 51.308(h) unless the Agency finalizes its proposal to approve the draft BART SIP.

V. Proposed Action

EPA proposes to approve the draft BART SIP and finds that it corrects the deficiencies that led to the limited approval and limited disapproval of the State's regional haze SIP; to withdraw the limited disapproval of Mississippi's regional haze SIP; and to fully approve Mississippi's regional haze SIP as meeting all regional haze requirements of the CAA for the first implementation period, replacing the prior limited approval. EPA also proposes to approve Mississippi's October 4, 2018, Regional Haze Progress Report, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and to approve the State's negative declaration under 51.308(h). EPA cannot take final action to approve Mississippi's Progress Report and negative declaration unless the Agency finalizes its proposal to approve the draft BART SIP.

[74] As noted in Section IV.A.2, the conversion of Plant Watson from coal to natural gas in 2015 contributed to significant SO_2 emissions decreases after 2014. In addition, 2017 Mississippi EGU SO_2 emissions were 3,841 tons, which were below the 2018 projected 15,213 tons shown in Table 13 of section IV.A.2 of this notice.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 23, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–16443 Filed 8–3–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–3394–NC]

RIN 0938–AU25

Medicare Program: Electronic Prescribing of Controlled Substances; Request for Information (RFI)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: Section 2003 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) requires generally that prescriptions for controlled substances covered under a Medicare Part D prescription drug plan or Medicare Advantage Prescription Drug Plan (MA/PD) be transmitted by a health care practitioner electronically in accordance with an electronic prescription drug program, beginning January 1, 2021. Further, section 2003 of the SUPPORT Act provides CMS with the authority to, through rulemaking, enforce and specify appropriate penalties for noncompliance with the requirement for electronic prescribing of controlled substances (EPCS). The SUPPORT Act requires CMS to specify, through rulemaking, circumstances and processes by which it may waive the EPCS requirement. This Request for Information (RFI) seeks input from

stakeholders about whether CMS should include exceptions to the EPCS and under what circumstances, and whether CMS should impose penalties for noncompliance with this mandate in its rulemaking, and what those penalties should be.

DATES: To be assured consideration, comments must be received at one of the addresses provided in the **ADDRESSES** section, no later than 5 p.m. on October 5, 2020.

ADDRESSES: In commenting, refer to file code CMS–3394–NC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''''Submit a comment'' '' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3394–NC, P.O. Box 8013, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3394–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ashley Hain, (410) 786–7603, for general inquiries related to the RFI. Joella Roland, (410) 786–7638, for Part D electronic-prescribing issues.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

In 2018, President Trump signed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, or the SUPPORT for Patients and Communities Act, into law, which mobilized Federal efforts to address the nation's ongoing opioid crisis. Section 2003 of the SUPPORT Act mandates that the prescribing of a Schedule II, III, IV, or V controlled substance under Medicare Part D should be done electronically in accordance with an electronic prescription drug program, beginning 2021, subject to any exceptions, which the Department of Health and Human Services (HHS) may specify. The circumstances that are listed in the statute under which the Secretary may waive the EPCS requirement are at section 1860D–4(e)(7) of the Act, as added by section 2003 of the SUPPORT Act, and include—

- A prescription issued when the practitioner and dispensing pharmacy are the same entity;
- A prescription issued that cannot be transmitted electronically under the most recently implemented version of the National Council for Prescription Drug Programs SCRIPT Standard;
- A prescription issued by a practitioner who received a waiver or a renewal thereof for a period of time as determined by the Secretary, not to exceed one year, from the requirement to use electronic prescribing due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the practitioner, or other exceptional circumstance demonstrated by the practitioner;
- A prescription issued by a practitioner under circumstances in which, notwithstanding the practitioner's ability to submit a prescription electronically as required by this subsection, such practitioner reasonably determines that it would be impractical for the individual involved to obtain substances prescribed by electronic prescription in a timely manner, and such delay would adversely impact the individual's medical condition involved;
- A prescription issued by a practitioner prescribing a drug under a research protocol;
- A prescription issued by a practitioner for a drug for which the Food and Drug Administration requires a prescription to contain elements that are not able to be included in electronic prescribing, such as a drug with risk evaluation and mitigation strategies that include elements to assure safe use;
- A prescription issued by a practitioner—

++ For an individual who receives hospice care under title XVIII; and

++ That is not covered under the hospice benefit under title XVIII; and

- A prescription issued by a practitioner for an individual who is—

++ A resident of a nursing facility (as defined in section 1919(a) of the Act); and

++ Dually eligible for benefits under titles and XVIII and XIX.

Since Part D was signed into law in 2003, electronic prescribing (e-prescribing or e-Rx) has been optional for physicians with respect to prescriptions made for covered Part D drugs. However, Part D sponsors offering drug plans have been required to have the electronic capabilities to support electronic prescribing. CMS adopted the first set of standards for e-prescribing for Part D in 2005.[1] Those standards included the National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard Version 5, Release 0. Since then, CMS has continued to adopt updated e-prescribing standards[2] with the most recent standard described in a final rule published April 16, 2018, where CMS finalized its update of its Part D standards to NCPDP SCRIPT standard version 2017071 for e-Rx and medication history, effective January 1, 2020 (83 FR 16440).

We maintain a prescription drug events (PDEs) system to capture Part D prescriptions processed (see OMB Control Number 0938–0982). The PDE format includes a field in which the plan must indicate whether the prescription was written via paper, electronic or telephonic means. CMS has collected data on controlled substances and non-controlled substances since the Drug Enforcement Agency (DEA) permitted the electronic prescribing of controlled substances in 2010.[3]

However, as HHS and other Federal departments and agencies work to implement various provisions of the SUPPORT Act, including the electronic prescribing requirements for controlled substances under Part D, the health care system faces new challenges. The United States is currently responding to an outbreak of respiratory disease caused by a novel (new) coronavirus now detected in 50 States and the District of Columbia. This virus has been named ''severe acute respiratory syndrome coronavirus 2'' (''SARS-CoV–2''), and the disease it causes has been named ''coronavirus disease 2019''

[1] *See* 70 FR 67568.

[2] CMS regulations adopting updated versions of the NCPDP SCRIPT standard: 73 FR 18918 (NCPDP SCRIPT version 8.1) and 77 FR 688892 (NCPDP SCRIPT version 10.6).

[3] *See* 75 FR 16284, including revisions adopted to 21 CFR 1304.04.

(''COVID–19''). In January 2020, HHS Secretary Alex M. Azar II determined that a Public Health Emergency (PHE) exists for the United States to aid the nation's health care community in responding to COVID–19 (hereafter referred to as the PHE for the COVID–19 pandemic), and on April 21, 2020, Secretary Azar renewed, effective April 26, 2020, the determination that a PHE exists. In March 2020, President Trump declared the COVID–19 pandemic a national emergency. Certain individuals, including older adults and persons with chronic conditions, who comprise a predominance of the Medicare beneficiary population, are at elevated risk of more severe illness and potential death from COVID–19. The Centers for Disease Control's guidance on the COVID–19 pandemic notes that ''people in their 50s are at higher risk for severe illness than people in their 40s. Similarly, people in their 60s or 70s are, in general, at higher risk for severe illness than people in their 50s. The greatest risk for severe illness from COVID–19 is among those aged 85 or older.'' [4] As a result of the PHE, and as the nation reopens, some individuals, such as those who are at high risk, may continue to practice self-isolation and social distancing.[5]

We have taken many regulatory and policy actions to swiftly aid the nation's health care system to address effectively the COVID–19 pandemic. These actions include new flexibilities for telehealth and other electronic technologies [6] to ease the burden on providers and help assure appropriate and safe care in a range of settings for beneficiaries. Also, DEA has adopted certain new temporary flexibilities to allow DEA-registered practitioners to prescribe controlled substances without having to interact in person with some patients, effective for the duration of the PHE.[7] DEA's COVID–19 information page may be found at: *https://www.deadiversion.usdoj.gov/coronavirus.html.* DEA has acknowledged the prevalence of paper prescribing of controlled substances and attempted to address some of the hardships it poses for prescribers and patients during the PHE. We believe that social distancing is, in part, responsible for the increase in EPCS during this PHE. In 2020, electronic prescribing increased to 50 percent of all PDEs being prescribed as compared to 38 percent in 2019.[8] With the use of electronic prescribing, a patient and provider can conduct a visit via telehealth and then have the prescription electronically transmitted to the pharmacy without having to see each other in-person and risk transmitting COVID–19. Some insurers, including Part D plans, may be permitting medication refills, including for controlled substances, earlier than usual or for a more extended period of time than was previously allowed. Pharmacies that were not previously doing so may deliver medications, or deliver at no charge, and communities and individuals have worked together to design ways for vulnerable persons to continue to receive access to prescribed medications in tandem with these new government and private sector flexibilities.

DEA has the primary responsibility for establishing requirements for prescribing and dispensing of controlled substances. In 2010, DEA issued an Interim Final Rule with Request for Comment, ''Electronic Prescriptions for Controlled Substances,'' that provided practitioners with the option of writing prescriptions for controlled substances electronically (75 FR 16236). The rule also permitted pharmacies to receive, dispense, and archive these electronic prescriptions. Any electronic controlled substance prescription issued by a practitioner must meet the requirements in DEA's EPCS interim final rule. On April 21, 2020, DEA reopened the 2010 interim final rule to solicit comments from the public on specific EPCS-related issues.[9]

Since the issuance of DEA's EPCS interim final rule in 2010, CMS has seen a steady increase in the volume of controlled substance prescriptions submitted electronically. For example, in 2018, 26.57 percent of controlled substance prescription drug events (PDEs) were transmitted electronically. In 2019, e-prescribing for controlled substances PDEs increased to 37.31 percent. However, in our 2020 data, 51.15 percent of those PDEs have been transmitted electronically. States have instituted electronic prescribing requirements; some include penalties for not using e-prescribing for controlled substances. As of 2020, all states in the U.S. and the District of Columbia allow electronic prescribing of controlled substances for schedules II through V.[10]

EPCS provides multiple advantages over the traditional processing of prescriptions.[11] In addition to improving workflow efficiencies, electronic prescribing of controlled substances can deter and help detect prescription fraud and irregularities by requiring an extra layer of identity proofing, two-factor authentication and digital signature processes. It can also provide more timely and accurate data than paper prescriptions. By allowing for the direct transmission of electronic prescriptions for controlled substances between providers and pharmacies or facilities, EPCS may also reduce the burden on prescribers who need to coordinate and manage paper prescriptions between staff, patients, facilities, other care sites, and pharmacies. In addition, EPCS data is transmitted to Prescription Drug Monitoring Programs (PDMPs), which can help inform providers of patients' medication history at the time of prescribing. It is also important to continue the assurance of privacy and

[4] *See https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html.*

[5] *See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html.*

[6] *See https://www.cms.gov/files/document/covid-19-physicians-and-practitioners.pdf.*

[7] *See https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-023)(DEA075)Decision_Tree_(Final)_33120_2007.pdf.*

[8] Based on Prescription Drug Event data processed through April 30, 2020.

[9] *See https://www.federalregister.gov/documents/2020/04/21/2020-07085/electronic-prescriptions-for-controlled-substances.*

[10] Schedule I drugs are not included in EPCS discussions because they have no currently accepted medical use. See *https://www.deadiversion.usdoj.gov/schedules/#define* for additional detail on definitions of controlled substances.

[11] Phillips et. al. ''Market Guide for Identity Proofing and Corroboration.'' April 24, 2018. Gartner, Inc. Retrieved from *https://www.fedscoop.com/gartner-guide-identity-proofing-corroboration-2018/* on April 30, 2020. Ryan, D. ''FinCEN: Know Your Customer Requirements.'' February 7, 2016. Harvard Law School Forum on Corporate Governance. Retrieved from *https://corpgov.law.harvard.edu/2016/02/07/fincen-know-your-customer-requirements/#2b* on April 30, 2020. Nix, M. ''Five Questions: Ken Whittemore Talks Past, Present & Future of E-Prescribing Controlled Substances.'' March 31, 2020. SureScripts. Retrieved from *https://surescripts.com/news-center/intelligence-in-action/opioids/five-questions-ken-whittemore-talks-past-present-future-of-e-prescribing-controlled-substances?utm_campaign=IIA* percent2FBlog percent20Subscription&utm_source=hs_email&utm_medium=email&utm_content=85955401&_hsenc=p2ANqtz-8xs36u7x TFZ-ieOxJk3309SApbE7to_fnk1SZvz2jqwz0pA3k7 TtW9byiOq2zBlheLInMOeajCMCKeQUTzc EDP79HEaeXI52QiadhAYAWU3Px2eZc&_hsmi=85955401 on April 30, 2020. Zhang et. al. ''T2FA: Transparent Two-Factor Authentication.'' June 15, 2018. IEEE Access. Retrieved from *https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=8386653* on April 30, 2020. Konoth R.K., van der Veen V., Bos H. (2017) How Anywhere Computing Just Killed Your Phone-Based Two-Factor Authentication. In: Grosslags J., Preneel B. (eds) Financial Cryptography and Data Security. FC 2016. Lecture Notes in Computer Science, vol 9603. Springer, Berlin, Heidelberg. Retrieved from *https://link.springer.com/chapter/10.1007* percent2F978–3–662–54970–4_24 on April 30, 2020. Cal and Zhu. ''Fraud detections for online businesses: a perspective from blockchain technology.'' *Financial Innovation* (2016) 2:20. Retrieved from *https://link.springer.com/content/pdf/10.1186/s40854-016-0039-4.pdf* on April 30, 2020.

security in the prescribing process, such as by controlling prescriber access through improved identity controls and authentication protocols. EPCS can assure prescribers' identity more easily and may permit a single workflow for prescribing both controlled and non-controlled drugs, improving the overall prescribing process.[12]

From the patient standpoint, EPCS may reduce the logistical burden on patients who may otherwise be required to make multiple trips between providers and pharmacies to transport paper prescriptions when filling time-sensitive prescriptions while in pain or otherwise in need of treatment with controlled substances, as Schedule II, III, IV, or V drugs that may be used to treat a number of conditions. EPCS can lessen the time needed to obtain prescriptions by minimizing trips to the physician to pick up paper prescriptions for refills, minimize transportation costs to and from the provider's office, and even help lessen stigma, well-known to be associated with chronic pain when opioid therapy is used as a treatment modality.[13] EPCS' security advantages also assure prescribers, patients, and pharmacies that prescriptions are processed as intended. In addition to helping with the reduction in fraud previously described, EPCS minimizes the likelihood that prescriptions have been tampered with, since electronic prescriptions are securely transmitted directly to the pharmacy from health information technology, which minimizes the likelihood of exposure to patients or other third parties with potentially malicious intent.

II. Solicitation of Public Comments

We are issuing this RFI and requesting comment from stakeholders regarding how the SUPPORT Act's EPCS requirements can be implemented with minimal burden to those prescribers participating in the Part D program during and after the PHE. We are committed to helping health care providers streamline operations, and want to strongly encourage prescriber EPCS adoption across the health care continuum as another mechanism to further ease burden, ensure prescribing safety, and improve beneficiary health and satisfaction.

We seek responses to this RFI from beneficiary and advocacy groups; beneficiaries and caregivers; primary care and specialty providers; health plans and supplemental insurers; state, local, and territorial governments; research and policy experts; industry and professional associations; long-term care facilities, hospice providers, pharmacists, and pharmacy associations; and other interested members of the public.

In the following sections of this RFI, we discuss compliance assessments, enforcement (including penalties), and waivers. We seek comments in response to questions related to each of these topics in each subsection.

Commenters are requested to provide responses to the following questions that are most relevant to their interest and experience. A response to every question is not required. Additionally, commenters may identify and comment on other issues that they believe are significant for CMS to consider in implementing the SUPPORT Act's EPCS requirements. Respondents are requested to draw their responses from objective, empirical, and actionable evidence and to cite this evidence within their responses whenever possible.

A EPCS Compliance Assessments

Based on a published report of 2019 data reflecting the majority of prescribing activities across the country,[14] 97 percent of U.S. pharmacies were capable of processing electronic prescriptions for controlled substances, yet only 49 percent of prescribers were capable of electronically prescribing controlled substances. The same report showed that 38 percent of controlled substance prescriptions were electronically prescribed, while 85 percent of non-controlled substances were electronically prescribed. Pain management specialists appear to be using electronic prescribing for controlled substances more often than other prescribers, and family practitioners are using electronic prescribing less often. Electronic prescribing also varies across practice size and ownership and among physicians who practice in groups owned by a health plan, health maintenance organizations, hospital, or other healthcare entity. Use of the technology does not vary significantly between rural and urban areas, but it does vary between states, likely associated with differences in regulations, penalties, waivers, populations, and culture.[15]

The reasons for this disparity between capability and practice are likely to be multifaceted. For instance, we hypothesize that there may be challenges associated with some prescribers' ability to electronically prescribe controlled substances within their normal workflow, and reluctance to alter workflow habits use new technology, although the recent COVID–19-related need to shift to remote forms of patient care may have already rapidly and substantially altered many such preferences. Other prescribers may be dependent on health care groups, clinics, or hospital systems to implement the necessary technology. There are also costs associated with the adoption of technology, which may disproportionately impact small or rural practices or pharmacies. Though EPCS uptake continues to grow,[16] based on pre-COVID–19 data, there is clearly more opportunity for greater adoption of electronic prescribing of controlled substances.

Substantial adoption of EPCS has occurred in the thirteen states that require it.[17] Some states have chosen to use penalties to increase prescribers' compliance with EPCS requirements. For example, New York mandated EPCS with a penalty for non-compliance and subsequently experienced an EPCS adoption rate for controlled substances of nearly 99 percent for pharmacies and

[12] HHS Office of the National Coordinator, The ONC Doctors' Perspective: Electronic Prescribing of Controlled Substances (EPCS) Is on the Rise, and We Must Work Together to Address Barriers to Use: *https://www.healthit.gov/buzz-blog/health-it/the-onc-doctors-perspective-electronic-prescribing-of-controlled-substances-epcs-is-on-the-rise-and-we-must-work-together-to-address-barriers-to-use*

[13] Department of Health and Human Services Pain Management Best Practices Inter-Agency Task Force Report, May 2019: *https://www.hhs.gov/sites/default/files/pmtf-final-report-2019-05-23.pdf*.

[14] Surescripts. ''National Progress Report 2019.'' March 2020. Retrieved from *https://surescripts.com/docs/default-source/national-progress-reports/7398_ab-v2_2019-npr-brochure.pdf* on April 20, 2020.

[15] HHS Office of the National Coordinator, The ONC Doctors' Perspective: Electronic Prescribing of Controlled Substances (EPCS) Is on the Rise, and We Must Work Together to Address Barriers to Use: *https://www.healthit.gov/buzz-blog/health-it/the-onc-doctors-perspective-electronic-prescribing-of-controlled-substances-epcs-is-on-the-rise-and-we-must-work-together-to-address-barriers-to-use.*

[16] Burger, M. ''Accelerating ePrescribing for Controlled Substances.'' HIT Perspectives: Controlled Substances, February 2014. Retrieved from *https://www.pocp.com/hitperspectives-controlled-substances/* on April 30, 2020. Imambaccus N, Glace S, Heath R. Increasing the uptake of electronic prescribing in primary care. BMJ Quality Improvement Reports 2017;6:u212185.w4870. doi:10.1136/bmjquality.u212185.w4870. Retrieved from *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5457970/pdf/bmjqir.u212185.w4870.pdf* on April 30, 2020. Monegain, B. ''E-prescribing takes off like a rocket.'' Healthcare IT News, June 18, 2015. Retrieved from *https://www.healthcareitnews.com/news/e-prescribing-takes-rocket* on April 30, 2020.

[17] Arizona, Connecticut, Florida, Indiana, Iowa, Maine, Minnesota, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, and Virginia have adopted mandates that will be in effect in 2020. DrFirst. Mandates Driving EPCS and PDMP Utilization. Accessed April 29, 2020. *https://drfirst.com/resources/regulatory-mandates/*.

82 percent for prescribers in 2019.[18] CMS does not currently impose penalties for providers prescribing controlled substances under the Part D program who do not use e-prescribing. Rather, Part D plans may reject improper transactions or transactions that do not adhere to the CMS transaction standards.

Given that the SUPPORT Act generally mandates electronic prescribing of a Schedule II, III, IV, or V controlled substance under Medicare Part D, we seek comment on the following specific questions with respect to assessing compliance with EPCS requirements:

- What types of challenges might discourage prescribers from incorporating electronic prescribing into their normal workflows? How could CMS structure its EPCS policy to remove roadblocks to effective adoption of electronic prescribing for controlled substances?
- What level of compliance with EPCS would be appropriate to require before levying any penalties on a non-compliant prescriber, and why? For example, should we consider adopting a percentage of prescribers threshold that a practice must meet to be considered compliant with EPCS requirements? Should we instead consider specifying a number or percentage of a practice's patients?
- What time period (or periods) should CMS use to evaluate compliance (for example, quarterly, semi-annually, annually) and how should we communicate information on performance to the prescriber to drive improvement?

B. EPCS Enforcement

Section 2003 of the SUPPORT Act provides authority to the Secretary to enforce and specify appropriate penalties for non-compliance with the EPCS requirements. To ensure compliance with EPCS mandates, some States have imposed penalties for prescribers who fail to use EPCS. For example, Pennsylvania enforces prescriber penalties of $100 per violation for the first through tenth violations and $250 per violation for the eleventh and subsequent violations, up to $5,000 per year.[19] Based on stakeholder experience with the States and their varying penalties, we seek comment on what, if any, penalties stakeholders believe would be appropriate for non-compliance with a Federal EPCS mandate.

We note that the SUPPORT Act places limits on the Secretary's authority to require Part D plans, MA organizations offering MA–PD plans, or pharmacists to verify that a practitioner has a waiver or is otherwise exempt from EPCS requirements,[20] in addition to language in section 1860D–4(e)(7)(C)(ii) of the Act, which ensures that plans may cover and pharmacists may dispense covered Part D drugs from otherwise valid written, oral, or fax prescriptions, and in section 1860D–4(e)(7)(C)(iii) of the Act, which ensures that Medicare beneficiaries can designate a particular pharmacy to dispense their covered Part D drugs. We view those limitations as important protections for Medicare beneficiaries that will ensure continued access to needed medications. We are interested in feedback from the public about the most appropriate ways to encourage EPCS compliance in the face of practical limits on real-time compliance enforcement options.

Additionally, we seek feedback on how we should implement the EPCS requirement for prescribers of Part D drugs who are not enrolled in Medicare or Medicaid. We request feedback on what policies would be most appropriate within the SUPPORT Act's statutory limits to encourage EPCS adoption among prescribers of Part D drugs who are not enrolled in Medicare or Medicaid.

We seek comment on the following specific questions with respect to enforcement:

- What penalties, if any, would be appropriate for non-compliance with a Federal EPCS mandate?
- How may Federal penalties affect EPCS adherence?
- What mechanism(s) should CMS use to enforce penalties among non-participating Medicare or Medicaid prescribers?
- Are there other mechanisms CMS can use to encourage non-participating Medicare or Medicaid prescribers to use EPCS?
- Are there any circumstances under which penalties should automatically be waived?
- How should CMS approach design and use of an appeals process for enforcement?
- If CMS were to impose civil money penalties, what penalty structure (including amounts) should be adopted?
- Should any details about penalties for violations of section 2003 of the Support Act be posted publicly? What types of details should be included in information available to the public?
- Should CMS assess penalties after some interval following implementation of this requirement? If yes, what interval(s)?
- Should CMS assess penalties' severity incrementally based on repeat analyses demonstrating lack of improved compliance? If yes, please describe what type of analyses would be most effective.
- Should penalties be significant enough that a prescriber not eligible for a waiver or exemption would be either forced to comply with the electronic prescribing requirement for controlled substances, or stop providing such pharmacologic care across all covered classes of controlled substances? What are the implications for patients in either scenario?

C. EPCS Waivers

Section 2003 of the SUPPORT Act requires that the Secretary use rulemaking to specify circumstances and processes by which the Secretary may waive the EPCS requirement.

We are interested in receiving input on circumstances for which the Secretary should waive the EPCS requirement, including those circumstances specified by section 2003 of the SUPPORT Act. For instance, an ONC Data Brief published in September 2019[21] indicated that larger physician practices and practices owned by hospitals had the highest rates of physician EPCS, suggesting that smaller practices may struggle to adopt the technology and practice. As we discuss in the following paragraph, we are interested in stakeholder input on any waivers and accompanying limits to the waivers that would be appropriate, the specific reasons that such waivers and limits may be necessary, and any operational or policy considerations that we should take into account when considering the need for and adopting waivers in connection with the EPCS requirement.

The SUPPORT Act specifies some circumstances under which the Secretary may waive the electronic prescribing requirement with respect to

[18] Surescripts, 2019 National Progress Report. Accessed April 29, 2020. *https://naspa.us/wp-content/uploads/2020/04/7398_2019-NPR-Brochure-Web-Final.pdf.*

[19] Pennsylvania Department of Health Q&A on Act 96 of 2018 and applicable Federal requirements, revised 10/31/2019. Retrieved from *https://www.health.pa.gov/topics/Documents/Programs/PA_EPCS_FAQ.pdf* on May 1, 2020.

[20] *See* section 1860D–4(e)(7)(C)(i) of the Social Security Act, as added by section 2003 of the SUPPORT Act.

[21] Parasrampuria *et. al.* ''Electronic Prescribing of Controlled Substances among Office-Based Physicians, 2017.'' Office of the National Coordinator for Health Information Technology Data Brief. Retrieved from *https://www.healthit.gov/sites/default/files/page/2019-09/officebasedphysicianelectronicprescribingofcontrolledsubstance2017.pdf* on May 20, 2020.

controlled substances that are covered Part D drugs and also permits HHS to develop other appropriate exceptions. Given the numerous benefits of electronic prescribing for prescribers and patients, and in accordance with section 2003 of the SUPPORT Act, CMS seeks to define any exceptions narrowly. We also want to clarify that all prescribers may prescribe electronically (provided it is done in accordance with DEA regulations with respect to controlled substances), even if a waiver may apply, and we continue to encourage clinicians who prescribe to use electronic prescribing. The circumstances that are listed in the statute under which the Secretary may waive the EPCS requirement are as follows:

- A prescription issued when the practitioner and dispensing pharmacy are the same entity. We seek comments on whether this exception is necessary, and how these claims may be identified.
- A prescription issued that cannot be transmitted electronically under the most recently adopted version of the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard. We believe that the current adopted standard NCPDP SCRIPT version 2017071 allows for most electronic prescribing transmissions. We seek comment on this assumption and on any specific circumstances in which a prescription for a controlled substance could not be transmitted electronically under this standard.
- A prescription issued by a practitioner who received a waiver for a period of time (not to exceed 1 year) from the SUPPORT Act's section 2003 requirement to use electronic prescribing due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the practitioner, or other exceptional circumstance demonstrated by the practitioner. We seek comment on the types of economic hardships and technological limitations that would be demonstrated to CMS, and what other types of exceptional circumstances would qualify.
- A prescription issued by a practitioner under circumstances in which, notwithstanding the practitioner's ability to submit a prescription electronically, the practitioner reasonably determines it would be impractical for the individual involved to obtain substances prescribed by electronic prescription in a timely manner, and the delay would adversely impact the individual's medical condition. We seek comment on the following:

++ The types of circumstances that would qualify.

++ Whether this must be explicitly conveyed to CMS to ensure compliance.

++ If CMS should infer that certain circumstances would qualify for an exception.

- A prescription issued by a practitioner prescribing a drug under a research protocol. We seek comment on the circumstances in which this exception is necessary and how CMS would identify these prescriptions.
- A prescription issued by a practitioner for a drug for which the Food and Drug Administration requires a prescription to contain elements that are not able to be included in electronic prescribing, such as a drug with risk evaluation and mitigation strategies that include elements to assure safe use. We seek comment on whether there are any drugs currently under risk evaluation and mitigation strategies for which prescriptions are not conveyed electronically or cannot be modified for electronic transmittal.
- A prescription issued by a practitioner—

++ For an individual who receives Medicare hospice care; and

++ That is not covered under the Medicare hospice benefit.

We seek comment on the circumstances in which this exception is necessary, and how this information would be conveyed to CMS.

- A prescription issued by a practitioner for an individual who is—

++ A resident of a nursing facility; and

++ Dually eligible for Medicare and Medicaid.

We recognize that electronic prescribing for residents in nursing facilities can be challenging due to necessary three-way communication involving the prescriber, the facility and the pharmacy. Waiting for the prescriber to transmit controlled substance prescriptions electronically for new admissions could create delays in initiating urgent medication therapy because a prescriber could be required to log in to the electronic health record or other health IT system to enter a complete and compliant prescription and may not have immediate access to the system if not on site at the nursing facility. We also recognize that early versions of the NCPDP SCRIPT standard, such as NCPDP SCRIPT standard version 5.0 and 8.1, did not support the workflows in the long-term care setting that require prescribers to issue a prescription for a patient to a non-prescriber (such as a nursing facility) that in turn forwards the prescription to a dispenser (LTC pharmacy). Nonetheless, many key Part D initiatives such as electronic prior authorization are anchored within the NCPDP SCRIPT standard version 2017071. CMS recognizes and is encouraged by the NCPDP's efforts to ensure that e-prescribing standards accommodate the unique needs of nursing facility residents. As these efforts progress, we believe that electronic prescribing will become more widely adopted in these settings. Additionally, as nursing residents are at high risk for infection, serious illness, and death from COVID–19, we are especially interested in how to assure streamlined and timely prescribing. We seek comments on our understanding of the persistence of such challenges for EPCS in the nursing facility setting and on any other specific circumstances which would support this exception.

Individuals who are dually eligible for Medicare and Medicaid often receive care in the home, through home and community-based services (HCBS) or home health services, instead of in a facility like a nursing facility. We seek comment on whether there are any additional issues, gaps, situations or barriers CMS needs to consider in implementing section 2003 for dually-eligible beneficiaries receiving HCBS or home health services.

We are also interested in receiving input on any other possible exceptions, such as in cases where a practitioner reasonably determines it would be impractical for the individual involved to obtain controlled substances prescribed using EPCS in a timely manner and the delay would adversely impact the individual's medical condition, or where EPCS would present an economic hardship. If commenters believe such exceptions should apply, please provide details on the circumstances that would require the exception, and the reasoning on whether the exception should be for a certain timeframe or indefinitely, and to whom the exception should apply.

III. Collection of Information Requirements

Please note, this is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the

commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. We note that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about potential policy issues raised in this RFI.

We will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. We may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this RFI. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. In addition, we may publicly post the public comments received or a summary of those public comments.

Dated: July 20, 2020.

Demetrios Kouzoukas,

Principal Deputy Administrator for Medicare, Centers for Medicare & Medicaid Services.

Dated: July 29, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–16897 Filed 7–30–20; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 200713–0189]

RIN 0648–BJ64

Fisheries of the Exclusive Economic Zone Off Alaska; Removing the Prohibition on Continuing To Fish After a Partial Offload in the Bering Sea/Aleutian Islands Crab Rationalization Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would remove the regulatory prohibition on continuing to fish after a partial offload in the Bering Sea and Aleutian Islands (BS/AI) Crab Rationalization (CR) Program. This proposed action is needed to provide CR crab fishery participants operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan (FMP) for BS/AI King and Tanner Crabs (Crab FMP), and other applicable laws.

DATES: Submit comments on or before September 3, 2020.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2020–0034, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0034,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are 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), 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).

Electronic copies of the draft Regulatory Impact Review (referred to as the ''Analysis'') and the draft Categorical Exclusion prepared for this proposed rule may be obtained from *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the king and Tanner crab fisheries in the exclusive economic zone (EEZ) of the BS/AI under the Crab FMP. The North Pacific Fishery Management Council (Council) prepared the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations implementing most provisions of the Crab FMP, including the CR Program, are located at 50 CFR part 680. Regulations implementing specific provisions of the Crab FMP that pertain to the License Limitation Permit Program are located at 50 CFR part 679.

All relevant comments submitted on this proposed rule and received by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule.

Background

The CR Program was implemented on April 1, 2005 (70 FR 10174, March 2, 2005). The CR Program established a limited access program (LAP) for nine crab fisheries in the BS/AI and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BS/AI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion

of the annual total allowable catch (TAC). This annual exclusive harvest privilege is called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the CR Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BS/AI CR crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. Each year there is a one-to-one match between the total pounds of IFQ that must be delivered to a processor with IPQ with and the total pounds of IPQ issued in each CR crab fishery.

Under current regulations, a person may offload a portion of CR crab from a vessel at multiple processors. However, except for the Western Aleutian Islands golden king crab fishery, regulations at 50 CFR 680.7(b)(3) prohibit a person from fishing again or taking CR crab on board the vessel until all of the crab originally on board the vessel have been offloaded. The prohibition against resuming fishing once an offload has commenced and until it is completed applies to CR Program crab, which includes IFQ and Community Development Quota (CDQ) crab landings. In December 2019, the Council recommended removing the regulatory prohibition on resuming fishing for CR crab between partial offloads for all CR crab fisheries. This proposed rule is a regulatory amendment that would remove this prohibition against continuing to fish in the BSAI CR crab fisheries once offloading has commenced and until all CR crab are landed.

Removal of the prohibition would provide IFQ and CDQ participants in CR crab fisheries operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, such as inclement weather. With adjustments by the State to its data collection protocols, proper catch accounting would be maintained with this proposed action. The following sections of this preamble provide (1) a brief history of the prohibition on crab partial offloads; (2) the expected effects of and need for this action; and (3) a description of the regulatory change made by this proposed rule.

Brief History of the Prohibition on Crab Partial Offloads

The regulatory prohibition on returning to fish after a partial offload of crab was originally established with the implementation of the CR Program. NMFS published the final rule to implement the CR Program on March 2, 2005 (70 FR 10174). Fishing under the CR Program started with the 2005/2006 crab fishing year. The regulatory prohibition on partial offloads at 50 CFR 680.7(b)(3) was intended to address enforcement concerns associated with a potential change in discarding behavior due to the new management of the fisheries. Specifically, there were concerns that undesirable crab (*e.g.*, overages, deadloss, or barnacled crab) would be discarded at sea without being accounted for, and there was a concern that resuming fishing between partial offloads would exacerbate the opportunity to discard crab illegally. The prohibition was intended to ensure that all fishery removals are monitored and reported in the CR Program catch accounting system. The final rule to implement the CR Program has a detailed description of the monitoring and catch accounting provisions in the CR crab fisheries (70 FR 10174, March 2, 2005).

Experience with the CR Program has shown that illegal (unreported) crab discards are unlikely for several reasons. First, there is no prohibition on sorting crab at the rail, and this is where undesirable crab are often discarded. These discards are accounted for by the Alaska Department of Fish and Game (ADF&G) and ADF&G has communicated to industry that high levels of discarding at the rail would be reflected in the stock assessments and ultimate crab TACs. Second, while discarding crab later in the trip is prohibited, dumping crab at sea once it has gone into the tanks would be dangerous and impractical. Third, the risk of quota overages has been greatly reduced due to the cooperative structure of the CR Program, online quota transfers, and post-delivery quota transfers, giving the industry many options to resolve a potential overage. Finally, the structure of the CR Program means more people than just the vessel operators are put at risk by this sort of illegal activity. Experience with the CR Program also has shown that the prohibition against continuing to fish for CR crab after an offload has begun and until the offload is complete has simplified dockside sampling and catch accounting.

In 2016, the Council recommended, and NMFS implemented an exemption from this prohibition specifically for the Western Aleutian Islands golden king crab (WAG) fishery (81 FR 24511, April 26, 2016). This exemption was developed to accommodate harvesting and processing operations in Adak, Alaska for a live crab market. In order to make this live market opportunity economically viable, processors needed vessels to be able to deliver small amounts of crab opportunistically while commercial aircraft were available. The Council wished to promote the product development and market opportunity, the economic efficiency, and potential community benefits this exemption could foster. Additionally, ADF&G determined that, given the small number of vessels prosecuting this fishery (consistently two to four vessels), ADF&G staff could work with these vessel operators to ensure this change would be minimally disruptive to the monitoring and accounting for catch in the WAG fishery.

In April 2018, the Council received a proposal from the Pacific Northwest Crab Industry Advisory Committee, requesting the same consideration for the rest of the CR crab fisheries. In February 2019, the Council decided to examine the proposal, stating that while the Council was interested in providing operational flexibility, particularly in emergencies or special circumstances, it also wanted to ensure that ADF&G would be able to maintain proper catch monitoring and accounting in the CR crab fisheries.

The Expected Effects of and Need for This Action

While fishing after a partial delivery was fairly common practice by vessels racing to catch and deliver crab before the CR Program was implemented, the CR Program has increased coordination between harvesters and processors, allowing for an increase in the efficiency of offloads. Under the CR Program, it is more economically efficient for vessels to offload all crab before resuming fishing in order to avoid deadloss of the crab sitting in tanks on the vessel. For this, and other reasons described earlier, the Council and NMFS do not anticipate that the resumption of fishing after a crab partial offload would become a routine operating procedure if the prohibition on fishing between partial offloads is removed. The flexibility resulting from this action would only be expected to be used in emergency situations, such as inclement weather, or special circumstances related to the economics of the operations. Therefore, the impacts of this action are expected to be minimal and only beneficial.

While the prohibition at § 680.7(b)(3) may no longer be needed to address enforcement concerns, the prohibition has greatly simplified dockside sampling and catch accounting. Section 2.7.4 of the Analysis for this action examined the effects of removing this

prohibition for all CR fisheries on the State's monitoring and catch accounting procedures and indicated whether modifications would be necessary and if necessary, what modifications would be required. Section 2.7.4 concludes that without modifications by ADF&G to accommodate the proposed change, removal of the prohibition could complicate some aspects of the State's dockside sampling, catch accounting, and Observer Program, and may degrade the spatial quality of some of the data collected in these fisheries.

For example, Section 2.7.4.3 of the Analysis states that ADF&G's protocol for at-sea sampling would likely not have to change under the proposed action, but that the State's Observer Program may need to define and adjust to a new definition of ''trip'' for some observer sampling purposes. In addition, NMFS requires operators of vessels in the CR crab fisheries to complete a daily fishing log. ADF&G uses data from the daily fishing log to verify landings and to ensure accurate accounting for all fishery removals. These existing accounting protocols will help to mitigate any complications that may arise if a CR crab fishery participant were to continue fishing between partial offloads. Finally, any level of concern with the complexity the proposed action generates regarding management and accounting issues is tied to frequency of use. Because this proposed action is not anticipated to be used often, any complexity regarding catch accounting is expected to be minimal. ADF&G indicated that it could adjust its monitoring and catch accounting procedures and protocols to accommodate the proposed action and maintain data quality, and that it would make those adjustments upon implementation of the action.

The Council determined, and NMFS agrees, that this proposed action would provide CR Program fishery participants with additional operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, such as inclement weather. The Council also acknowledged that with adjustments by the State to its data collection protocols, proper catch accounting would be maintained with this proposed action.

Proposed Rule

This proposed rule would remove the prohibition on continuing to fish after a partial offload of crab in the BS/AI CR crab fisheries. To make that change, this proposed rule would remove the prohibition language in section (b)(3) under 50 CFR 680.7 and renumber subsequent sections under § 680.7(b).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Council's regulatory amendment, the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

Certification Under the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would remove the prohibition against continuing to fish in the BS/AI CR crab fisheries once offloading has commenced and until all CR Program crab are landed. This will allow CR Program fishery participants operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, while also ensuring proper catch accounting.

Entities that would be directly regulated by this proposed rule include those that commercially harvest BS/AI CR crab, including holders of IFQ and CDQ crab. These are the participants currently regulated by the prohibition at 50 CFR 680.7(b)(3). Although potentially impacted, regulatory changes from the proposed rule would not directly include processors, processor quota shareholders, individual processing quota holders, or communities. In 2018, the most recent year with vessel revenue data available, there were 68 vessels participating in CR crab fisheries (including harvesting CDQ crab). All of these vessels fished within cooperatives, and all but 8 of these vessels were part of cooperatives whose gross revenues exceeded $11.0 million. Thus, due to their affiliations, 60 harvesters are considered large entities for purposes of the Regulatory Flexibility Act (RFA), and 8 are considered small entities. In recent years, vessels unaffiliated with a cooperative harvested a small amount of quota. If unaffiliated with a cooperative, these entities may also be considered small under the RFA definition. Based on the scope of this action, impacts to small, directly regulated entities are expected to be minimal and beneficial if the entities decide to use the flexibility to continue fishing after a partial offload.

This action does not place any new regulatory burden on CR Program participants; it allows increased flexibility for vessels that choose to use the voluntary harvest flexibility. This proposed action, therefore, is not expected to have a significant economic impact on a substantial number of the small entities directly regulated by this proposed action.

As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 14, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 680 as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

§ 680.7 Amended

■ 2. In § 680.7, remove paragraph (b)(3) and redesignate paragraphs (b)(4) through (7) as (b)(3) through (6), respectively.

[FR Doc. 2020–15661 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 150
Tuesday, August 4, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 30, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 these information collections are best assured of having their full effect if received by September 3, 2020. 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.

National Agricultural Statistics Service

Title: Land Leasing Survey in Oklahoma.

OMB Control Number: 0535–0264.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. NASS will conduct a survey of agricultural operations in Oklahoma. Selected farmers will be asked to provide data on rent & acreage as well as form of the lease agreement for operations with the following lease agreements: (1) Cash rent for selected crops, (2) share rent, (3) pasture leases, winter grazing, and recreational leases. General authority for these data collection activities is granted under U.S.C. Title 7, Section 2204.

Need and Use of the Information: Oklahoma State University, as well as many farmers and ranchers in Oklahoma, have been interested in land rental rates for agricultural operations in greater detail than what is provided in the Cash Rents and Leases Survey used to satisfy the requirement originally specified in the 2008 Farm Bill and conducted under Office of Management and Budget approval number 0535–0002.

To assist producers with this data need, the Oklahoma State University, Department of Agricultural Economics (OSU–DAE), has been collecting and publishing statistical estimates biennially for more than 30 years—before USDA–NASS was tasked with the Cash Rents County Estimates. The OSU–DAE obtained statistics to assist producers in making sound rental agreements. Due to the diverse nature of the state, OSU–DAE felt it necessary to provide more descriptive land breakouts such as pasture estimates into native pasture and improved pasture due to large price differences and input costs associated with each type of pasture.

A recent data request highlighted this limit: A data user (landlord) was trying to re-negotiate the rental rate with their lessee on a large amount of Bermuda grass pastureland. They were given the pasture rate from the USDA–NASS 2017 Cash Rents Survey for the county ($10/ac), district ($12/ac), and the State ($13/ac). The data user was able to find the OSU–DAE pasture rates for 2016/2017 for Bermuda (Improved Pasture) in his Region ($24.55) and at the State level ($22.79). The data user would have lost $12 to $14/per acre if used only the USDA–NASS Cash Rents Survey data alone.

Description of Respondents: Farmers and ranchers in Oklahoma.

Number of Respondents: 2,700.

Frequency of Responses: Reporting: Once a year.

Total Burden Hours: 1,022.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–16960 Filed 8–3–20; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee; Virtual Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/pts.*

DATES: The meeting will be held on September 10, 2020, at 6:00 p.m.

All RAC meetings are subject to cancellation. For the status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtual only for virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ketchikan Misty Fjords Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Penny L. Richardson, RAC Coordinator, by phone at 907–228–4105 (office) or 907–419–5300 (cell), or via email at *penny.richardson@usda.gov*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Update members on past RAC projects, and

2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 3, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Penny L. Richardson, RAC Coordinator, Ketchikan Misty Fjords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to *penny.richardson@usda.gov,* or via facsimile to 907–225–8738.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accomodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–16954 Filed 8–3–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting via teleconference on Wednesday, August 19, 2020, at 12:00 p.m. Eastern Time, for the purpose of discussing Voting Rights and COVID 19 in the state.

DATES: The meeting will be held on Wednesday, August 19, 2020, at 12:00 p.m. Eastern Time.

Public Call Information: Dial: 800–367–2403; Confirmation Code: 7568625.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjPAAQ* under the Commission on Civil Rights, Michigan Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Approval of Minutes from July 20 meeting
Discussion: Voting Rights and COVID 19 in the state
Public Comment
Adjournment

Dated: July 30, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–16953 Filed 8–3–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (ET) on Tuesday, 18, 2020. The purpose of the project planning meeting is to discuss and vote on the Committee's draft report of its civil rights project on disparate school discipline in Pennsylvania schools.

Public call-in information: Conference call-in number: 800–353–6461 and conference call ID number: 6813288.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their

organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288.

Members of the public are invited to make brief statements during the Public Comment section of the meeting or submit written comments. The written comments must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may phone the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjZAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Tuesday, August 18, 2020

I. Rollcall
II. Welcome
III. Project Planning
—Discuss draft Committee report on its civil rights project
—Vote to submit draft report to the legal sufficiency review
IV. Other Business
V. Next Public Meeting
VI. Public Comments
VII. Adjourn

Dated: July 29, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–16868 Filed 8–3–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2020 Census Count Question Resolution Operation

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed reinstatement with change of the 2020 Census Count Question Resolution Operation, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 5, 2020.

ADDRESSES: Interested persons are invited to submit written comments by email to *robin.a.pennington@census.gov.* Please reference ''2020 Census Count Question Resolution Operation'' in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0005, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Robin A. Pennington, Decennial Census Management Division, Program Management Office, by phone 301–763–8132 or by email *robin.a.pennington@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The 2020 Census Count Question Resolution operation (CQR) provides a mechanism for tribal, state, and local government units to request a review of their official 2020 Census results. The 2020 Census CQR is the only decennial operation by which corrections to the 2020 Census data can be made. Specifically, tribal chairpersons and the highest elected officials (or their representative) from state and local government units in the United States and Puerto Rico can submit a CQR case to request review of the official 2020 Census count of housing and associated population, and to correct boundary and count issues. Through this formal process, the Census Bureau reviews cases received to determine whether the 2020 Census count of housing (*e.g.,* housing units and/or group quarters) [1] and associated population has been impacted by any geographic or processing errors.

The 2020 Census CQR addresses two types of cases: Boundary and count. Boundary cases involve a review of legal government unit boundaries in effect as of January 1, 2020, and the associated addresses affected by the boundaries. Count cases involve a review of the geographic location or placement of housing and associated population (geocoding issue), as well as a review of the enumeration universe for census processing errors (coverage issue). Corrections made to the housing counts and associated population by this operation will result in the issuance of new, official 2020 Census counts to the tribal chairperson or highest elected official of affected government units. The Census Bureau will use these corrections to modify the decennial census file for use in the annual postcensal estimates, released for the years after a decennial census, and to create the errata information that will be

[1] A group quarters is a place where people live or stay, in a group living arrangement, owned, or managed by an entity or organization providing housing and/or services for the residents.

This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other.

Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

made available on the web on a flow basis as case research is completed.

The CQR does not revise the population counts sent to the President by April 30, 2021, which determine apportionment of the U.S. House of Representatives or to revise population counts relating to differential privacy, which is the new mathematical approach developed to protect the identify of individual respondents in the 2020 Census population counts. Visit the Disclosure Avoidance and the 2020 Census website for more information on the implementation of differential privacy to protect 2020 Census data.[2]

The Census Bureau will accept CQR cases between October 1, 2021 and June 30, 2023. The Census Bureau will only accept cases that originate from the tribal chairperson or highest elected official of tribal, state, and local government units. After a government unit initiates a case in writing through mail or email, the tribal chairperson or highest elected official may designate officials representing them to work with the Census Bureau on their respective CQR case(s).

The Census Bureau process for CQR includes researching the issues brought forth by cases and, as appropriate, making corrections and issuing revised official counts of population and housing, which the Census Bureau uses for its Population Estimates Program. The Census Bureau will not accept cases to review the overseas counts of persons in the military and Federal civilian personnel stationed overseas and their dependents living with them. The Census Bureau obtains overseas counts using administrative records.

The Census Bureau will make corrections based on appropriate documentation provided by the questioning government unit and through research of the official 2020 Census records. The Census Bureau will not collect additional data for the enumeration of housing through CQR and will not incorporate CQR corrections into the 2020 Census data summary files and tables or re-tabulate any of the other 2020 Census data products.

The Census Bureau describes the resulting corrective action from the two CQR case types as follows:

- Boundary cases may correct the inaccurate recording of boundaries, legally in effect on January 1, 2020, and update the housing counts for the blocks affected by the boundary correction if the government unit supplies the required individual address records for the affected block(s). Boundary changes effective after January 1, 2020, boundary corrections submitted without individual address records, and boundary corrections that do not affect counts are out of scope for CQR.
- Count cases with geocoding issues may correct inaccurate geographic locations or placement of housing and associated population within the correct government unit boundaries and 2020 census tabulation blocks.
- Count cases with coverage issues may result in the addition of specific housing and associated population identified during the census process, but erroneously included as duplicates or excluded from enumeration. Coverage corrections are limited to census processing errors, *i.e.,* erroneous exclusions of housing identified as existing in census records as of April 1, 2020.

For count cases, updated counts for the number of housing units and/or group quarters is the only requirement for a government unit to supply with their submission. This differs from the 2010 CQR requirement that requested a list of addresses and updated counts for the blocks included in the case. During 2020 CQR, a government unit does not provide updated population counts for the housing units and/or group quarters within the 2020 census tabulation blocks in question.

The Census Bureau will research accepted cases to determine whether it can identify information about the existence of housing on April 1, 2020 that does not appear in the final census files because of an error (*e.g.,* boundary, geocoding, or coverage) resulting in an incorrect population or housing count. When CQR research shows that errors occurred, the Census Bureau will provide corrected official counts of population and housing to all affected government units in determination letters that will be distributed on a flow basis as research is completed. The Census Bureau will also distribute errata showing these corrections based on CQR cases on the CQR website, but will not incorporate CQR corrections into the 2020 Census data summary files and tables or re-tabulate any of the other 2020 Census data products.

II. Method of Collection

The Census Bureau requires documentation before committing resources to review and research CQR cases. The submitted case must specify whether it disputes the location of a government unit boundary, the count of housing units and/or group quarters in one or more 2020 census tabulation blocks, or both.

The CQR case documentation can be prepared and submitted in paper format by mail or prepared electronically and submitted using the Census Bureau's Secure Web Incoming Module (SWIM). Use of SWIM is new for 2020 CQR. No web interface for sharing digital files existed for use during 2010 CQR. Information about specific case criteria, block count lists, acceptable map types, and acceptable address types, is included below.

Boundary Case Criteria

Tribal, state, and local government units must base boundary cases on the legal boundaries in effect on January 1, 2020. The Census Bureau will compare the maps and appropriate documentation submitted by the government unit with the information used by the Census Bureau to depict the boundaries for the 2020 Census.

Government units initiating a boundary case must submit a map (or maps) indicating the portion of the boundary that the Census Bureau potentially depicted incorrectly, including the 2020 census tabulation block numbers associated with the boundary, as well as depicting the correct location of the boundary. See the Acceptable Map Types section below for additional details.

The government unit must provide a list of residential addresses in the 2020 census tabulation blocks affected by the incorrect boundary, indicating their coordinates or location in relationship to the boundary. The list of addresses must follow the templates provided on the CQR website or within the Geographic Update Partnership Software (GUPS).[3] The government unit must certify that the submitted addresses existed and were available for occupancy on April 1, 2020. They must provide information regarding the validity of the address source(s) by discussing its creation, usual use, and maintenance cycle. See the Acceptable Address Types section below for additional details.

Boundary cases affected by legal actions not recorded by the Census Bureau, such as annexation, de-annexation, incorporation, disincorporation, must include legal documentation stating the effective date of January 1, 2020, or before, and ordinance or resolution number or law approving the boundary change. Additionally, the government unit must provide evidence that the state

[2] <*https://www.census.gov/about/policies/privacy/statistical_safeguards/disclosure-avoidance-2020-census.html*>.

[3] GUPS replaces the MAF/TIGER Partnership Software (MTPS) used for 2010 CQR.

certifying official has approved the boundary change if required by state law, and provide a statement that the boundary change is not under litigation.

Count Case Criteria (Geocoding/ Coverage)

Government units filing cases to dispute the housing counts of 2020 census tabulation blocks, whether caused by geocoding or coverage issues, must submit a block count list that includes the contested 2020 census tabulation block(s) within their government unit and the correct count of housing units and group quarters as of April 1, 2020. CQR participants may use the housing unit and the group quarters counts by 2020 census tabulation block contained in the Public Law 94–171 Redistricting Data Files or the Demographic and Housing Characteristics File, a variation of the former Summary File 1, to determine the official counts from the 2020 Census. Government units may use the files in conjunction with the 2020 TIGER/Line shapefiles, 2020 Census Block Maps, or Public Law 94–171 County Block Maps. This material will be released to the public through the Census Bureau website no later than July 31, 2021. Access to the housing unit and the group quarters counts by 2020 census tabulation block will be available to CQR participants through download from the CQR website. Collectively, the census data products will provide CQR participants with the appropriate tools for assessing the accuracy of their decennial census counts and determining whether initiating a case is necessary.

A government unit may provide a map depicting the location of the housing units and group quarters to assist the Census Bureau with their research. Participants should only provide a list of residential addresses for count cases in any subsequent submissions or re-submissions to help the Census Bureau conduct additional research after the Census Bureau completed an initial determination. The list of addresses must follow the templates provided on the CQR website or within GUPS. If providing an address list, the government unit must certify that the submitted addresses existed and were available for occupancy on April 1, 2020. They must provide information regarding the validity of the address source(s) by discussing its creation, usual use, and maintenance cycle.

Acceptable Map Types

2020 Census Public Law 94–171 County Block Maps—Large format, county based maps produced by the Census Bureau as a reference for the Redistricting Data Files available for all States, the District of Columbia, and Puerto Rico. Used to determine if filing a case is necessary and to support a boundary case.

2020 Census Block Maps—Large format, government unit based maps produced by the Census Bureau to support the Decennial Census data release. Used to reference the Demographic and Housing Characteristics File, a variation of the former Summary File 1, to determine if filing a case is necessary and to support a boundary case.

2020 TIGER/Line shapefiles—Available as spatial files and for use in GUPS or other geographic information system (GIS) software used to determine if filing a case is necessary and if so, to generate maps or files for submission with a boundary case.

2020 Census Block Work Maps—Small format, tabulation block based maps produced by the Census Bureau, upon request of a government unit. Used to annotate address map spots to support a boundary case where the scale of the large format products is inadequate. Other materials suffice to determine whether filing a case is necessary.

Other paper maps showing the 2020 census tabulation block numbers and boundaries—Used to support a boundary case. These maps must use the 2020 TIGER/Line shapefiles as their source and show legal boundaries of the government unit as of January 1, 2020, census tracts, census tabulation blocks, and any other legal entity involved in a case. In general, these maps compare to the 2020 Census Block Maps.

Acceptable Address Types

City Style Addresses—City style addresses must include house number, apartment number (if applicable), street name, ZIP code, and state, county, 2020 census tract, and 2020 census tabulation block code information. The Census Bureau requires government units to use the template within GUPS or on the CQR website to generate an acceptable list of city style addresses.

Non-City Style Addresses—Non-city style addresses include rural route addresses, physical location descriptions, and any other addresses that do not contain components of a city style address. The Census Bureau requires government units use the template within GUPS or on the CQR website to generate an acceptable list of non-city style addresses.

Group Quarters Addresses—Group quarters addresses must include the group quarters name and telephone number or email address, and may include city style or non-city style addresses. Government units must use the template within GUPS or on the CQR website to generate an acceptable list of group quarters addresses.

III. Data

OMB Control Number: 0607–0879.

Form Number(s): None.

Type of Review: Regular submission, Request for a Reinstatement, with Change, of a Previously Approved Collection.

Affected Public: Tribal, State, or local government units in the United States and Puerto Rico.

Estimated Number of Respondents: 1,500.

Estimated Time per Response: 5.2 hours (based on 40 records per case).

Estimated Total Annual Burden Hours: 7,800.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 141.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–16962 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2020]

Foreign-Trade Zone (FTZ) 32—Miami, Florida; Authorization of Production Activity; BLU Products, Inc. (Cellular Phones, Accessories, and Components), Doral, Florida

On April 1, 2020, BLU Products, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 32, in Doral, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 19725, April 8, 2020). On July 30, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: July 30, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–16964 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–131–2020]

Foreign-Trade Zone 229—Charleston, West Virginia; Application for Subzone; Childers Guns, LLC; Fairmont, West Virginia

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the West Virginia Economic Development Authority, grantee of FTZ 229, requesting subzone status for the facility of Childers Guns, LLC, located in Fairmont, West Virginia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 29, 2020.

The proposed subzone (0.11 acres) is located at 521 Gaston Avenue, Fairmont, West Virginia. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 229.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is September 14, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 28, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: July 30, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–16963 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–49–2020]

Foreign-Trade Zone (FTZ) 183—Austin, Texas; Notification of Proposed Production Activity; Flextronics America, LLC (Automated Data Processing Machines); Austin, Texas

Flextronics America, LLC (Flextronics) submitted a notification of proposed production activity to the FTZ Board for its facilities in Austin, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 24, 2020.

Flextronics already has authority to produce automated data processing machines within Subzone 183C. The current request would add a finished product and foreign status components to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Flextronics from customs duty payments on the foreign-status materials/components used in export production (estimated 90 percent of production). On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Flextronics would be able to choose the duty rates during customs entry procedures that apply to desktop computers (duty-free). Flextronics would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include plastic sheets, plastic film and desktop computers (duty rate ranges from duty-free to 6.5%). The request indicates that plastic sheets and plastic film are subject to an antidumping/countervailing duty (AD/CVD) order if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is September 14, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: July 29, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–16888 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2104]

Restricted Approval for Production Authority/Foreign-Trade Zone 12/Black & Decker (U.S.), Inc. (Lithium Ion Battery Assembly for Cordless Power Tools)/Mission, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the McAllen Foreign Trade Zone Inc., grantee of Foreign-Trade Zone 12, has requested production authority on behalf of Black & Decker (U.S.), Inc. (Black & Decker), within FTZ 12 in Mission, Texas, (B–68–2019, docketed October 25, 2019);

Whereas, notice inviting public comment has been given in the **Federal Register** (84 FR 59352, November 4, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied and that the proposal would be in the public interest, if subject to the restriction listed below;

Now, therefore, the Board hereby orders:

The application for production authority under zone procedures within FTZ 12 on behalf of Black & Decker, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to the following restriction: The authority shall remain in effect for a period of five years from the date of approval by the Board.

Dated: July 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–16889 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–48–2020]

Foreign-Trade Zone (FTZ) 201—Holyoke, Massachusetts; Notification of Proposed Production Activity; ProAmpac Holdings, Inc. (Flexible Packaging Applications); Westfield, Massachusetts

ProAmpac Holdings, Inc. (ProAmpac) submitted a notification of proposed production activity to the FTZ Board for its facilities in Westfield, Massachusetts. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 27, 2020.

ProAmpac already has authority to produce flexible packaging for food, medical, pharmaceutical, and other consumer and industrial applications within Subzone 201D. The current request would add finished products to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt ProAmpac from customs duty payments on the foreign-status materials/components used in export production (estimated five percent of production). On its domestic sales, ProAmpac would be able to choose the duty rates during customs entry procedures that apply to: Heavy paper can liner and pouch/packaging stock—paper and paperboard, weighing >150g/m2, with aluminum laminated on one side, and extruded plastics, with the paper being the primary layer; paper can liner and pouch/packaging stock without plastics—paper with aluminum laminated on one side with the paper being the primary layer; paper label stock—paper and foil laminates used for labels; laminated aluminum lidding stock—printed or unprinted aluminum, laminated with a plastic coating; aluminum laminated packaging stock without extruded plastics—aluminum laminated with printed or unprinted paper or plastic film on one side, with the aluminum being the primary layer; and, aluminum food wrap—printed and unprinted aluminum laminated with paper in roll form (duty rates ranges from duty-free to 3.7%). ProAmpac would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

There are no new materials/components included in this notification.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is September 14, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: July 29, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–16890 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–47–2020]

Foreign-Trade Zone (FTZ) 49—Newark and Elizabeth, New Jersey; Notification of Proposed Production Activity; Catalent Pharma Solutions (Pharmaceutical Products); Somerset, New Jersey

Catalent Pharma Solutions (Catalent) submitted a notification of proposed production activity to the FTZ Board for its facility in Somerset, New Jersey. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 17, 2020.

The applicant indicates that it will be submitting a separate application for FTZ designation at the company's facility under FTZ 49. The facility is used for the production of encorafenib bulk capsules. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status material and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Catalent from customs duty payments on the foreign-status material used in export production. On its domestic sales, for the foreign-status material noted below, Catalent would be able to choose the duty rate during customs entry procedures that applies to BRAFTOVI (encorafenib bulk capsules) (duty-free). Catalent would be able to avoid duty on foreign-status material

which becomes scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material sourced from abroad is encorafenib API (duty rate 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is September 14, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: July 28, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–16887 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity To Reqest a Review: Not later than the last day of August 2020,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

Antidumping Duty Proceedings	
GERMANY: Seamless Line and Pressure Pipe, A–428–820	8/1/19–7/31/20
GERMANY: Sodium Nitrite, A–428–841	8/1/19–7/31/20
INDIA: Finished Carbon Steel Flanges, A–533–871	8/1/19–7/31/20
ITALY: Finished Carbon Steel Flanges, A–475–835	8/1/19–7/31/20
JAPAN: Brass Sheet & Strip, A–588–704	8/1/19–7/31/20
JAPAN: Tin Mill Products, A–588–854	8/1/19–7/31/20
MALAYSIA: Polyethylene Retail Carrier Bags, A–557–813	8/1/19–7/31/20
MEXICO: Light-Walled Rectangular Pipe and Tube, A–201–836	8/1/19–7/31/20
REPUBLIC OF KOREA: Dioctyl Terephthalate, A–580–889	8/1/19–7/31/20
REPUBLIC OF KOREA: Large Power Transformers, A–580–867	8/1/19–7/31/20
REPUBLIC OF KOREA: Light-Walled Rectangular Pipe and Tube, A–580–859	8/1/19–7/31/20
REPUBLIC OF KOREA: Low Melt Polyester Staple Fiber, A–580–895	8/1/19–7/31/20
ROMANIA: Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–485–805	8/1/19–7/31/20
SPAIN: Ripe Olives, A–469–817	8/1/19–7/31/20
SOCIALIST REPUBLIC OF VIETNAM: Certain Frozen Fish Fillets, A–552–801	8/1/19–7/31/20
TAIWAN: Low Melt Polyester Staple Fiber, A–583–861	8/1/19–7/31/20
THAILAND: Polyethylene Retail Carrier Bags, A–549–821	8/1/19–7/31/20
THAILAND: Steel Propane Cylinders, A–549–839	12/27/18–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Cast Iron Soil Pipe Fittings, A–570–062	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Floor-Standing, Metal-Top Ironing Tables and Parts Thereof, A–570–888	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Hydrofluorocarbon Blends and Components Thereof, A–570–028	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Laminated Woven Sacks, A–570–916	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Light-Walled Rectangular Pipe and Tube, A–570–914	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Passenger Vehicle and Light Truck Tires, A–570–016	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Petroleum Wax Candles, A–570–504	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Retail Carrier Bags, A–570–886	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Nitrite, A–570–925	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Stainless Steel Flanges, A–570–064	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Steel Propane Cylinders, A–570–086	12/27/18–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Nails, A–570–909	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Sulfanilic Acid, A–570–815	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Tetrahydrofurfuryl Alcohol, A–570–887	8/1/19–7/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Tow-Behind Lawn Groomers and Parts Thereof, A–570–939	8/1/19–7/31/20
UKRAINE: Silicomanganese, A–823–805	8/1/19–7/31/20
Countervailing Duty Proceedings	
INDIA: Finished Carbon Steel Flanges, C–533–872	1/1/19–12/31/19
REPUBLIC OF KOREA: Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/19–12/31/19
SPAIN: Ripe Olives, C–469–818	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Cast Iron Soil Pipe Fittings, C–570–063	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Laminated Woven Sacks, C–570–917	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Light-Walled Rectangular Pipe and Tube, C–570–915	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Passenger Vehicle and Light Truck Tires, C–570–017	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Nitrite, C–570–926	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Steel Propane Cylinders, C–570–087	10/26/18–12/31/19
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2020. If Commerce does not receive, by the last day of August 2020, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 17, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–16877 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* the Enforcement and Compliance website at *https://legacy.trade.gov/enforcement/.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836, A–489–815, A–570–914, A–580–859, C–570–915]

Light-Walled Rectangular Pipe and Tube From the Republic of Korea, Mexico, the Republic of Turkey, and the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on light-walled rectangular pipe and tube (light-walled pipe) from the Republic of Korea (Korea), Mexico, the Republic of Turkey (Turkey), and the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable August 4, 2020.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, the ITC instituted,[1] and Commerce initiated,[2] the second five-year (sunset) reviews of the AD and CVD orders on light-walled pipe from Korea, Mexico, Turkey, and China (collectively, the AD Orders) and the second sunset review of the countervailing duty order on light-walled pipe from China (CVD Order), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the AD Orders on light-walled pipe from Korea, Mexico, Turkey, and China would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins of

[1] *See Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey; Institution of Five-Year Reviews,* 84 FR 18577 (May 1, 2019).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 18477 (May 1, 2019).

dumping likely to prevail should the AD Orders be revoked.[3] Commerce also determined, as a result of its review, that revocation of the CVD Order on light-walled pipe from China would be likely to lead to continuation or recurrence of countervailable subsidies and notified the ITC of the magnitude of the subsidy rates likely to prevail were the CVD Order revoked.[4]

On July 27, 2020, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD Orders and CVD Order would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by these orders is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope.

The welded carbon-quality rectangular pipe and tube subject to these orders is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the AD Orders and CVD Order would likely lead to a continuation or a recurrence of dumping and countervailable subsidies, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD Orders and CVD Order. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the AD Orders and CVD Order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the AD Orders and CVD Order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: July 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–16871 Filed 8–3–20; 8:45 am]

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[3] *See Light-Walled Rectangular Pipe and Tube from the Republic of Korea, Mexico, Turkey, and the People's Republic of China: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 84 FR 44849 (August 27, 2019), and accompanying Issues and Decision Memorandum (IDM).

[4] *See Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of the Expedited Second Five-Year Sunset Review of the Countervailing Duty Order,* 84 FR 45726 (August 30, 2019), and accompanying IDM.

[5] *See Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey (Investigation Nos. 701–TA–449 and 731–TA–1118–1121 (Second Review)),* 85 FR 45228 (July 27, 2020); *see also Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey (Inv. Nos. 701–TA–449 and 731–TA–1118–1121 (Second Review)),* USITC Pub. 5086, July 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–910, C–821–827]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Republic of Korea and the Russian Federation: Initiation of Countervailing Duty Investigations

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

DATES: Applicable July 28, 2020.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks (the Russian Federation), Moses Song, or Natasia Harrison (the Republic of Korea), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2670, (202) 482–7885 or (202) 482–1240, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 8, 2020, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions (Petitions) concerning imports of seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from the Republic of Korea (Korea) and the Russian Federation (Russia), filed in proper form on behalf of Vallourec Star, LP (the petitioner), a domestic producer of seamless pipe.[1]

Between July 10 and July 20, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[2] The petitioner filed

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine,'' dated July 8, 2020 (the Petitions).

[2] *See* Commerce's Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine and Countervailing Duties on Imports from the Republic of Korea and Russia: Supplemental Questions,'' dated July 13, 2020 (General Issues Questionnaire); *see also* Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Russian Federation,'' dated July 14, 2020; Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Supplemental Questions,'' dated July 10, 2020; Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Second Supplemental

responses to these requests between July 14 and July 21, 2020.[3]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Korea (GOK) and the Government of Russia (GOR) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of seamless pipe in Korea and Russia, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing seamless pipe in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.[4]

Period of Investigation

Because the Petitions were filed on July 8, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.[5]

Scope of the Investigations

The merchandise covered by these investigations are seamless pipe from Korea and Russia. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on Scope of the Investigations

On July 13, 2020, Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On July 15, 2020, the petitioner revised the scope.[7] The description of the merchandise covered by these investigations, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on August 17, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 27, 2020, which is 10 calendar days from the initial comment deadline.[10]

Commerce requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the records of the concurrent Antidumping and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOK and the GOR of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.[12] Commerce held consultations with the GOK and the GOR on July 21, 2020 and July 23, 2020, respectively.[13]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for

Questions,'' dated July 13, 2020; Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Third Supplemental Questions,'' dated July 16, 2020; and Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Fourth Supplemental Questions,'' dated July 20, 2020.

[3] *See* Petitioner's Letter, ''Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine: Response to General Issues Questionnaire,'' dated July 15, 2020 (General Issues Supplement); *see also* Petitioner's Letter, ''Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Russia: Answers to Commerce Department Supplemental Questions,'' dated July 16, 2020 (Russia Supplement); Petitioner's Letter, ''Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Russia: Answers to Commerce Department Supplemental Questions,'' dated July 14, 2020 (First Korea Supplement); Petitioner's Letter, ''Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea: Answers to Commerce Department Second Supplemental Questions,'' dated July 15, 2020 (Second Korea Supplement); Petitioner's Letter, ''Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea: Answers to Commerce Department Third Supplemental Questions,'' dated July 20, 2020 (Third Korea Supplement); and Petitioner's Letter,'' Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea: Answers to Commerce Department Supplemental Questions,'' dated July 21, 2020 (Fourth Korea Supplement).

[4] *See* ''Determination of Industry Support for the Petitions'' section, *infra.*

[5] *See* 19 CFR 351.204(b)(2).

[6] *See* General Issues Questionnaire.

[7] *See* General Issues Supplement at 4 and Exhibit 3.

[8] *See Countervailing Duties,* 62 FR 27323 (May 19, 1997).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* Commerce's Letter, ''Countervailing Duty Petition on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Invitation for Consultations,'' dated July 9, 2020; *see also* Commerce's Letter, ''Countervailing Duty Petition on Seamless Carbon and Alloy Standard, Line, and Pressure Pipe from the Russian Federation: Invitation for Consultations,'' dated July 10, 2020.

[13] *See* Memorandum, ''Consultations with Government Officials from the Government of the Republic of Korea on the Countervailing Duty Petition Regarding Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea,'' dated July 22, 2020; *see also* Memorandum, ''Consultations with Officials from the Government of the Russian Federation,'' dated July 27, 2020.

more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[16] Based on our analysis of the information submitted on the record, we have determined that seamless pipe, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own shipments of the domestic like product in 2019, as well as the shipments of United States Steel Corporation, a supporter of the Petitions, and compared this to the estimated total shipments of the domestic like product for the entire domestic industry.[18] Because total industry production data for the domestic like product for 2019 are not reasonably available to the petitioner, and the petitioner has established that shipments are a reasonable proxy for production data,[19] we have relied on the data provided by the petitioner for purposes of measuring industry support.[20]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[21] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[22] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[23] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[24] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[25]

Injury Test

Because Russia and Korea are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Russia and/or Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[26]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; declines in production, shipments, capacity utilization, and employment variables; and declining financial performance.[27] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[16] *See* Volume I of the Petitions at 12–14 and Exhibits I–7 and I–8.

[17] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* the Countervailing Duty Investigation Initiation Checklist: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea (Korea CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine (Attachment II); *see also* Countervailing Duty Investigation Initiation Checklist: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Russia (Russia CVD Initiation Checklist), at Attachment II. These checklists are dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS.

[18] *See* Volume I of the Petitions at 4–5 and Exhibits I–1 through I–3; *see also* General Issues Supplement at 5–10 and Exhibit 6.

[19] *See* Volume I of the Petitions at 4–5 and Exhibit I–1.

[20] *See* Volume I of the Petitions at 4–5 and Exhibits I–1 through I–3; *see also* General Issues Supplement at 5–10 and Exhibits 6, 9, and 10. For further discussion, *see* Attachment II of country-specific CVD Initiation Checklists.

[21] *See* Attachment II of the country-specific CVD Initiation Checklists.

[22] *Id.; see also* section 702(c)(4)(D) of the Act.

[23] *See* Attachment II of the country-specific CVD Initiation Checklists.

[24] *Id.*

[25] *Id.*

[26] *See* Volume I of the Petitions at 18 and Exhibit I–10.

[27] *See* Volume I of the Petitions at 1, 17–34 and Exhibits I–1, I–2, I–10, and I–12 through I–15.

[28] *See* country-specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and

Initiation of CVD Investigations

Based upon the examination of the Petitions on seamless pipe from Korea and Russia, we find that the Petitions meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of seamless pipe from Korea and Russia benefit from countervailable subsidies conferred by the GOK and the GOR, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

Korea

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 38 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Korea Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Russia

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 11 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Russia Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioner named three companies in Korea and two companies in Russia as producers/exporters of seamless pipe.[29] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation.

In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of seamless pipe from Korea and Russia during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the appendix.

On July 21, 2020, Commerce released CBP data for U.S. imports of seamless pipe from Korea and Russia under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of these CVD investigations.[30] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. on the date noted above, unless an exception applies. Commerce intends to finalize its decisions regarding respondent selection within 20 days of the publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOK and GOR via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of seamless pipe from Korea and Russia are materially injuring or threatening material injury to a U.S. industry.[31] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[32] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [33] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[34] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties wishing to submit factual information in this investigation are asked to review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension

Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine.

[29] *See* Volume I of the Petitions at Exhibit I–9.

[30] *See* Memorandum, ''Countervailing Duty Petition on Imports of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Russian Federation: Release of U.S. Customs and Border Protection Data,'' dated July 21, 2020; *see also* Commerce's Letter, Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea—Release of Customs Data,'' dated July 21, 2020.

[31] *See* section 733(a) of the Act.

[32] *Id.*

[33] *See* 19 CFR 351.301(b).

[34] *See* 19 CFR 351.301(b)(2).

request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[35] Parties must use the certification formats provided in 19 CFR 351.303(g).[36] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.* Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[37]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: July 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by the scope of these investigations is seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in nominal outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or ''hollow profiles'' suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials (ASTM) or American Petroleum Institute (API) specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusions discussed below.

Specifically excluded from the scope of the investigations are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications, including pipe produced to the ASTM A–822 standard; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the investigations are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.,* outside diameter and wall thickness, of ASTM A–53, ASTM A–106 or API 5L specifications.

Subject seamless standard, line, and pressure pipe are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2020–16918 Filed 8–3–20; 8:45 am]

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[35] *See* section 782(b) of the Act.

[36] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[37] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On July 22, 2020, the United States Court of International Trade (CIT) sustained the final results of redetermination pertaining to the fourth administrative review of the antidumping duty order on certain steel threaded rod (steel threaded rod) from the People's Republic of China (China) covering the period of review (POR) April 1, 2012 through March 31, 2013. The Department of Commerce (Commerce) is notifying the public that the CIT's final judgment in this case is not in harmony with the final results of the administrative review and that Commerce is amending the final results with respect to the dumping margin calculated for Jiaxing Brother Fastener Co., Ltd. (a/k/a Jiaxing Brother Standard Parts, Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd. (collectively, the RMB/IFI Group).

DATES: Applicable August 1, 2020.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, 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) 482–4047.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2014, Commerce published its *Final Results* in the 2012–2013 administrative review of steel threaded rod from China.[1] During the review, Commerce selected Thailand as the primary surrogate country, finding that data from Thailand provided the best available information on the record to value the RMB/IFI Group's reported factors of production (FOPs). Commerce also relied on a ''Doing Business 2014: Thailand'' report from the World Bank

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 71743 (December 3, 2014) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

to derive the RMB/IFI Group's brokerage and handling (B&H) costs.

The RMB/IFI Group challenged several aspects of the *Final Results,* including Commerce's surrogate value (SV) calculation for B&H costs. In *Jiaxing Brother I,*[2] the CIT sustained all other challenged determinations, but remanded the *Final Results* to Commerce to reconsider the calculation of the B&H SV, finding Commerce's calculation unsupported by substantial evidence. In the First Remand Redetermination, Commerce revised the numerator of the B&H SV calculation downward to account for expenses associated with obtaining letters of credit. However, Commerce continued to rely on 10,000 kilograms (kgs)—which is the container weight assumption underlying the World Bank survey data—as the denominator for the SV calculation, explaining that the use of the 10,000 kg figure has been adopted as the standard methodology across many cases. Commerce also noted that using this figure avoids mixing different sources of data in the calculation of the B&H SV, which would yield distorted results.[3]

On February 3, 2020, the CIT issued *Jiaxing Brother II.*[4] The Court sustained Commerce's determination to adjust the numerator of the B&H SV calculation in order to take into account the cost of acquiring letters of credit.[5] With respect to the denominator, the CIT acknowledged Commerce's preference to use a single source for the B&H calculation and Commerce's past practice in this regard. However, it held that Commerce must further explain why using the weight of 10,000 kg as the denominator is reasonable and supported by substantial evidence in light of the RMB/IFI Group's information indicating that B&H costs were not based on the specific weight of a container.[6]

In its Second Remand Redetermination, consistent with *Jiaxing Brother II,* Commerce provided additional explanation regarding the selection of the 10,000 kg denominator.[7] Commerce compared the 10,000 kg figure assumed in the World Bank report to the alternatives proposed by the RMB/IFI Group (*i.e.,* the purported average weight of the RMB/IFI Group's shipments or the maximum theoretical weight of a container) as well as to other information contained on the administrative record. Based on this analysis, Commerce found that the 10,000 kg figure continues to be the best data available on the record.[8] On July 22, 2020, the Court sustained Commerce's determination to use the weight of 10,000 kg as the denominator for the SV calculation.[9]

Due to the removal of expenses associated with obtaining letters of credit in the B&H SV calculation, we have revised the RMB/IFI Group's weighted-average margin. The RMB/IFI Group's weighted-average margin decreased to 46.78 percent from the 47.62 percent margin calculated in the *Final Results.*[10]

Timken Notice

In its decision in *Timken,*[11] as clarified by *Diamond Sawblades,*[12] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a 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 22, 2020 judgment sustaining the Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to the RMB/IFI Group. The revised weighted-average dumping margin for the RMB/IFI Group for the period April 1, 2012 through March 31, 2013 is as follows:

Exporter	Weighted-average margin (percent)
RMB/IFI Group	46.78

Assessment Instructions

In the event the CIT's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by the RMB/IFI Group in accordance with 19 CFR 351.212(b)(1). Commerce will calculate importer-specific *ad valorem* 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 those sales, in accordance with 19 CFR 351.212(b)(1). 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 is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[13] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales data submitted by the RMB/IFI Group during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate.[14]

Cash Deposit Requirements

The cash deposit rate calculated for the RMB/IFI Group in the 2012–2013 administrative review has been superseded by a cash deposit rate calculated in an intervening administrative review of the antidumping duty order on steel threaded rod from China.[15] Thus, we will not alter the RMB/IFI Group's cash deposit rate.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

[2] *See Jiaxing Brother Fastener Co., Ltd. et al.* v. *United States,* 380 F. Supp. 3d 1343 (CIT 2019) (*Jiaxing Brother I*).

[3] *See* Final Results of Redetermination Pursuant to *Jiaxing Brother Fastener Co., Ltd. (a/k/a Jiaxing Brother Standard Part Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd.* v. *United States,* Court No. 14–00316, Slip Op. 19–55 (CIT May 9, 2019), dated August 27, 2019 (First Remand Redetermination).

[4] *See Jiaxing Brother Fastener Co., Ltd. et al.* v. *United States,* 425 F. Supp. 3d 1338 (CIT 2020) (*Jiaxing Brother II*).

[5] *Id.,* 425 F. Supp. 3d at 1351.

[6] *Id.,* 425 F. Supp. 3d at 1348–51.

[7] *See* Final Results of Redetermination Pursuant to *Jiaxing Brother Fastener Co., Ltd. et al.* v. *United States,* Court No. 14–00316, Slip Op. 20–13 (CIT February 3, 2020), dated April 17, 2020 (Second Remand Redetermination).

[8] *Id.*

[9] *See Jiaxing Brother Fastener Co., Ltd. et al.* v. *United States,* Court No. 14–00316, Slip Op. 20–102 (CIT July 22, 2020) at 13.

[10] *See* First Remand Redetermination at 29.

[11] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[12] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[13] *See* 19 CFR 351.106(c)(2).

[14] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[15] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 51611 (November 7, 2017).

Dated: July 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–16880 Filed 8–3–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–804, A–580–909, A–821–826, A–823–819]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable July 28, 2020.

FOR FURTHER INFORMATION CONTACT: Allison Hollander at (202) 482–2805 (the Czech Republic); Joshua DeMoss at (202) 482–3362 (the Republic of Korea (Korea)); Kathryn Turlo at (202) 482–3870 (the Russian Federation (Russia)); Zachary Shaykin at (202) 482–2638 (Ukraine); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 8, 2020, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from the Czech Republic, Korea, Russia, and Ukraine filed in proper form on behalf the Vallourec Star, LP (the petitioner), a domestic producer of seamless pipe.[1] The Petitions were accompanied by a countervailing duty (CVD) petitions concerning imports of seamless pipe from Korea and Russia.[2]

On July 13 and 17, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[3] The petitioner filed responses to the supplemental questionnaires on July 15 and 21, 2020.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of seamless pipe from the Czech Republic, Korea, Russia, and Ukraine are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the seamless pipe industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[5]

Periods of Investigation

Because the Petitions were filed on July 8, 2020, the periods of investigation (POI) for these LTFV investigations is July 1, 2019 through June 30, 2020, pursuant to 19 CFR 351.204(b)(1).[6]

Scope of the Investigations

The products covered by these investigations are seamless pipe from the Czech Republic, Korea, Russia, and Ukraine. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On July 13, 2020, Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On July 15, 2020, the petitioner revised the scope.[8] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on August 17, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 27, 2020, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of these investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine,'' dated July 8, 2020 (the Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine and Countervailing Duties on Imports from the Republic of Korea and Russia: Supplemental Questions,'' dated July 13, 2020 (General Issues Supplemental); and Country-Specific Supplemental Questionnaires: Czech Republic Supplemental, Korea Supplemental, Russia Supplemental, and Ukraine Supplemental, dated July 13, 2020 and Korea Second Supplemental, dated July 17, 2020.

[4] *See* Petitioner's Country-Specific Supplemental Responses, dated July 15, 2020; Korea Second Supplemental Response, dated July 21, 2020; *see also* Petitioner's Letter, ''Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine: Response to General Issues Questionnaire,'' dated July 15, 2020 (General Issues Supplement).

[5] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[6] *See* 19 CFR 351.204(b)(1).

[7] *See* General Issues Supplemental.

[8] *See* General Issues Supplement at 4 and Exhibit 3.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using

electronically filed document must be received successfully in its entirety by the time and date on which it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of seamless pipe to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe seamless pipe, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on August 17, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on August 27, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[14] Based on our analysis of the information submitted on the record, we have determined that seamless pipe, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own shipments of the domestic like product in 2019, as well as the shipments of United States Steel Corporation, a supporter of the Petitions, and compared this to the estimated total shipments of the domestic like product for the entire domestic industry.[16] Because total industry production data for the domestic like product for 2019 are not reasonably available to the petitioner, and the petitioner has established that shipments are a reasonable proxy for production data,[17] we have relied on the data provided by the petitioner for purposes of measuring industry support.[18]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[19] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not

ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[14] *See* Volume I of the Petitions at 12–14 and Exhibits I–7 and I–8.

[15] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* country-specific AD Initiation Checklists at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine (Attachment II). These checklists are dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS.

[16] *See* Volume I of the Petitions at 4–5 and Exhibits I–1 through I–3; *see also* General Issues Supplement at 5–10 and Exhibit 6.

[17] *See* Volume I of the Petitions at 4–5 and Exhibit I–1.

[18] *See* Volume I of the Petitions at 4–5 and Exhibits I–1 through I–3; *see also* General Issues Supplement at 5–10 and Exhibits 6, 9, and 10. For further discussion, *see* country-specific AD Initiation Checklists at Attachment II.

[19] *See* country-specific AD Initiation Checklists at Attachment II.

required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[22] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[23]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; declines in production, shipments, capacity utilization, and employment; and declining financial performance.[25] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[26]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate these LTFV investigations of imports of seamless pipe from the Czech Republic, Korea, Russia, and Ukraine. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

U.S. Price

For the Czech Republic, Korea, Russia, and Ukraine, the petitioner based export price (EP) on the average unit values of publicly available import data. The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price.[27]

Normal Value [28]

For the Czech Republic, Russia, and Ukraine, the petitioner based NV on a home market price quote obtained through market research for seamless pipe produced in and sold, or offered for sale, in each country within the applicable time period.[29] For Russia, the information provided by the petitioner indicates that the home market price quote was below the COP; therefore, the petitioner also calculated NV based on constructed value (CV).[30] For Korea, the petitioner stated it was unable to obtain home market or third country prices to use as a basis for NV, and, therefore, the petitioner calculated NV based on CV.[31]

For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Normal Value Based on Constructed Value

As noted above, the information provided by the petitioner indicates that the price charged for seamless pipe produced in and sold, or offered for sale, in Russia was below the COP. Accordingly, for Russia, the petitioner also based NV on CV.[32] Additionally, the petitioner was not able to obtain home market prices or third country prices in Korea. Accordingly, for Korea, the petitioner based NV on CV.[33] Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[34]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of seamless pipe from the Czech Republic, Korea, Russia, and Ukraine are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV or CV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for seamless pipe for each of the countries covered by this initiation are as follows: (1) The Czech Republic—50.45 and 51.70 percent; (2) Korea—114.80 to 131.31 percent; (3) Russia—41.07 to 273.47 percent; and (4) Ukraine—42.38 and 42.88 percent.[35]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating these LTFV investigations to determine whether imports of seamless pipe from the Czech Republic, Korea, Russia, and Ukraine are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioner named three companies in the Czech Republic, three companies in Korea, and two companies in Russia [36] as producers and/or exporters of seamless pipe.

Following standard practice in LTFV investigations involving market economy countries, in the event Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the appendix.

[20] *Id.; see also* section 732(c)(4)(D) of the Act.

[21] *See* country-specific AD Initiation Checklists at Attachment II.

[22] *Id.*

[23] *Id.*

[24] *See* Volume I of the Petitions at 18 and Exhibit I–10.

[25] *See* Volume I of the Petitions at 1, 17–34 and Exhibits I–1, I–2, I–10, and I–12 through I–15.

[26] *See* country-specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine (Attachment III).

[27] *See* country-specific AD Initiation Checklists.

[28] In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product..

[29] *See* country-specific AD Initiation Checklists.

[30] *See* Russia AD Initiation Checklist.

[31] *See* Korea AD Initiation Checklist.

[32] *See* Russia AD Initiation Checklist.

[33] *See* Korea AD Initiation Checklist.

[34] *See* country-specific AD Initiation Checklists.

[35] *See* country-specific AD Initiation Checklists.

[36] *See* Volume I of the Petitions at Exhibit I–9.

On July 21, 2020, Commerce released CBP data on imports of seamless pipe from the Czech Republic, Korea, and Russia under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of these investigations.[37] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://enforcement.trade.gov/apo.*

The petitioner identified one company in Ukraine as the producer and/or exporter of seamless pipe (*i.e.,* Interpipe NTRP), and provided independent third-party information as support.[38] We currently know of no additional producers or exporters of seamless pipe from Ukraine. Accordingly, Commerce intends to individually examine all known producers and exporters in the investigation of seamless pipe from Ukraine (*i.e.,* Interpipe NTRP).

Parties wishing to comment on respondent selection for Ukraine must do so within three business days of the publication of this notice in the **Federal Register**. Commerce will not accept rebuttal comments regarding respondent selection for Ukraine.

Comments on CBP data and respondent selection must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of the Czech Republic, Korea, Russia, and Ukraine via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of seamless pipe from the Czech Republic, Korea, Russia, and/or Ukraine are materially injuring, or threatening material injury to, a U.S. industry.[39] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[40] Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [41] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[42] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to

[37] *See* Memoranda, ''Antidumping Duty Petition on Seamless Pipe from the Czech Republic: Release of Customs Data from U.S. Customs and Border Protection,'' ''Antidumping Duty Petition on Seamless Pipe from Korea: Release of Customs Data from U.S. Customs and Border Protection,'' and ''Antidumping Duty Petition on Seamless Pipe from Russia: Release of U.S. Customs and Border Protection Data,'' dated July 21, 2020.

[38] *See* Volume I of the Petitions at Exhibit I–9; *see also* Volume VII of the Petitions at Exhibit VII–3; *see also* Ukraine Supplement at 7.

[39] *See* section 733(a) of the Act.

[40] *Id.*

[41] *See* 19 CFR 351.301(b).

[42] *See* 19 CFR 351.301(b)(2).

submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[43] Parties must use the certification formats provided in 19 CFR 351.303(g).[44] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[45]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by the scope of these investigations is seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in nominal outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or ''hollow profiles'' suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials (ASTM) or American Petroleum Institute (API) specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusions discussed below.

Specifically excluded from the scope of the investigations are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications, including pipe produced to the ASTM A–822 standard; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the investigations are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.,* outside diameter and wall thickness, of ASTM A–53, ASTM A–106 or API 5L specifications.

Subject seamless standard, line, and pressure pipe are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2020–16911 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2020

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in September 2020 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Boltless Steel Shelving Units Prepackaged from China (A–570–018) (1st Review)	Matthew Renkey, (202) 482–2312.
Prestressed Concrete Steel Wire Strand from China (A–570–945) (2nd Review)	Matthew Renkey, (202) 482–2312.
Countervailing Duty Proceedings	
Boltless Steel Shelving Units Prepackaged from China (C–570–019) (1st Review)	Matthew Renkey, (202) 482–2312.
Prestressed Concrete Steel Wire Strand from China (C–570–946) (2nd Review)	Mary Kolberg, (202) 482–1785.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in September 2020.	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding

[43] *See* section 782(b) of the Act.

[44] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[45] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 17, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–16878 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–831]

Seamless Refined Copper Pipe and Tube From the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Applicable July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Ariela Garvett or Maisha Cryor; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3609 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 2020, the Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of seamless refined copper pipe and tube (copper pipe and tube) from the Socialist Republic of Vietnam (Vietnam) filed in proper form on behalf of the petitioners,[1] domestic producers of copper pipe and tube.[2]

On July 6, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition in a supplemental questionnaire.[3] On July 9, 2020, the petitioners filed a response to the supplemental questionnaire.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of copper pipe and tube from Vietnam are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the domestic copper pipe and tube industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioners supporting the allegation.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (E) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested investigation.[5]

Period of Investigation

Because Vietnam is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the period of investigation for the investigation is October 1, 2019 through March 31, 2020.

Scope of the Investigation

The products covered by this investigation are copper pipe and tube from Vietnam. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On July 6, 2020, Commerce requested further information from the petitioners regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On July 9, 2020, the petitioners revised the scope.[7] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[9] To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on August 10, 2020, which is the next business day after 20 calendar days from the signature date of this notice.[10] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 20, 2020, which is ten calendar days from the initial comment deadline.[11]

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[1] The petitioners are the American Copper Tube Coalition and its constituent members (collectively, the petitioners). The members of the American Copper Tube Coalition are: Mueller Copper Tube Products, Inc., Mueller Copper Tube West Co., Mueller Copper Tube Company, Inc., Howell Metal Company, and Linesets, Inc. (collectively, Mueller Group), and Cerro Flow Products, LLC.

[2] *See* Petitioners' Letter, ''Seamless Refined Copper Pipe and Tube from Vietnam: Antidumping Duty Petition,'' dated June 30, 2020 (the Petition).

[3] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Seamless Refined Copper Pipe and Tube from the Socialist Republic of Vietnam: Supplemental Questions,'' dated July 6, 2020 (Petition Supplemental).

[4] *See* Petitioners' Letter, ''Seamless Refined Copper Pipe and Tube from Vietnam: Amendment of Petition and Response to Commerce's Supplemental Questions,'' dated July 9, 2020 (Petition Supplement).

[5] *See infra,* section on ''Determination of Industry Support for the Petition''.

[6] *See* Petition Supplemental at 3.

[7] *See* Petition Supplement at Exhibit SUP–3.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, August 10, 2020). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005) (*Next Business Day Rule*).

[11] *See* 19 CFR 351.303(b).

additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the record of the investigation.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's (E&C's) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of copper pipe and tube to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on August 10, 2020, which is the next business day after 20 calendar days from the signature date of this notice.[13] Any rebuttal comments must be filed by 5:00 p.m. ET on August 20, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.[16] Based on our analysis of the information submitted on the record, we have determined that copper pipe and tube, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioners provided the 2019 production of the producers who support the Petition and compared this to the estimated production of the entire U.S. copper pipe and tube industry.[18] We relied on data provided by the petitioners for purposes of measuring industry support.[19]

Our review of the data provided in the Petition, the Petition Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.[20] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[13] *See* 19 CFR 351.303(b). Commerce practice dictates that where a deadline falls on a weekend or Federal holiday (in this instance, August 9, 2020), the appropriate deadline is the next business day. *See Next Business Day Rule,* 70 FR at 24533.

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] *See* Petition at 21–24; *see also* Petition Supplement at 1 and Exhibits SUP–1 and SUP–2.

[17] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* the Initiation Checklist at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Seamless Refined Copper Pipe and Tube from the Socialist Republic of Vietnam (Attachment II). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS.

[18] *See* Petition at 3–4 and Exhibits 2–4; *see also* Petition Supplement at 2–3 and Exhibit SUP–4.

[19] *See* Petition at 3–4 and Exhibits 2–4; *see also* Petition Supplement at 2–3 and Exhibit SUP–4. For further discussion, *see* Attachment II of the Initiation Checklist.

[20] *See* Attachment II of the Initiation Checklist.

[21] *Id.; see also* section 732(c)(4)(D) of the Act.

total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[23] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[24]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[25]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume and market share of subject imports; underselling and price depression or suppression; lost sales and revenue; declining employment levels; and declining financial performance.[26] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[27]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of copper pipe and tube from Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Initiation Checklist.

U.S. Price

The petitioners based export price (EP) on pricing information for a sales offer for copper pipe and tube produced in and exported from Vietnam. The petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price.[28]

Normal Value

Commerce considers Vietnam to be an NME country.[29] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Vietnam as an NME country for purposes of the initiation of this investigation. Accordingly, NV in Vietnam is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioners claim that India is an appropriate surrogate country because India is a market economy country that is at a level of economic development comparable to that of Vietnam and is a significant producer of comparable merchandise.[30] The petitioners provided publicly available information from India to value all FOPs.[31] Based on the information provided by the petitioners, we determine that it is appropriate to use India as a surrogate country for Vietnam for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

The petitioners used their own product-specific consumption rates as a surrogate to value Vietnamese manufacturers' FOPs.[32] Additionally, the petitioners calculated factory overhead; selling, general and administrative expenses; and profit based on the experience of an Indian producer of comparable merchandise (*e.g.,* seamless extruded copper and copper base alloy tubes, rods, sections).[33]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of copper pipe and tube from Vietnam are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margin for copper pipe and tube from Vietnam is 111.82 percent.[34]

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental response, we find that it meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of copper pipe and tube from Vietnam are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioners named five companies in Vietnam as producers/exporters of copper pipe and tube.[35]

In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are five producers and exporters identified in the Petition, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioners have provided a complete address.

[22] *See* Attachment II of the Initiation Checklist.

[23] *Id.*

[24] *Id.*

[25] *See* the Petition at 24–25 and Exhibit 36.

[26] *See* the Petition at 1–2, 19–20, 24–46 and Exhibits 36–43.

[27] *See* Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Seamless Refined Copper Pipe and Tube from the Socialist Republic of Vietnam.

[28] *See* Initiation Checklist at 6.

[29] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016–2017,* 84 FR 18007 (April 29, 2019).

[30] *See* Petition at 16–17 and Exhibits 24–25.

[31] *See* Petition at 18–19 and Exhibits 29–35; *see also* Petition Supplement at 6–8 and Exhibits SUP–10, SUP–11, SUP–13, SUP–14, SUP–15, and SUP–16.

[32] *See* Petition at 17 and Exhibit 26; *see also* Petition Supplement at 6.

[33] *See* Petition at 19 and Exhibits 34 and 35; *see also* Petition Supplement at 8 and Exhibit SUP–16.

[34] *See* Petition Supplement at Exhibit SUP–17.

[35] *See* the Petition at 15 and Exhibit 20; *see also* Petition Supplement at 4 and Exhibit SUP–7.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on E&C's website at *https://enforcement.trade.gov/questionnaires/questionnaires-ad.html.* Producers/exporters of copper pipe and tube from Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from E&C's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Vietnamese producers/exporters no later than 5:00 p.m. ET on August 5, 2020. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under Administrative Protective Order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on E&C's website at *http://enforcement.trade.gov/apo.* Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[36] The specific requirements for submitting a separate-rate application in a Vietnam investigation are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[37] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from Vietnam submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the {Commerce} will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[38]

Distribution of Copies of the AD Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the AD Petition has been provided to the government of Vietnam via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petition to each exporter named in the AD Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petition were filed, whether there is a reasonable indication that imports of copper pipe and tube from Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[39] A negative ITC determination will result in the investigation being terminated.[40] Otherwise, this AD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[41] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[42] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be

[36] *See* Policy Bulletin 05.1: ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[37] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[38] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[39] *See* section 733(a) of the Act.

[40] *Id.*

[41] *See* 19 CFR 351.301(b).

[42] *See* 19 CFR 351.301(b)(2).

considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.[43] Parties must use the certification formats provided in 19 CFR 351.303(g).[44] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[45]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 20, 2020

Jeffrey I. Kessler,

Assistant Secretaryfor Enforcement and Compliance.

Appendix—Scope of the Investigation

The products covered by this investigation are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in actual length and measuring less than 12.130 inches (308.102 mm) in actual outside diameter (OD), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of this investigation covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (ASTM) ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–B359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein.

Also included within the scope of this investigation are all sets of covered products, including ''line sets'' of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase ''all sets of covered products'' denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

''Refined copper'' is defined as: (1) Metal containing at least 99.85 percent by actual weight of copper; or (2) metal containing at least 97.5 percent by actual weight of copper, provided that the content by actual weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this investigation are all seamless circular hollows of refined copper less than 12 inches in actual length whose actual OD exceeds its actual length.

The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2020–17067 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable August 1, 2020.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the

[43] *See* section 782(b) of the Act.

[44] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[45] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–570–002	731–TA–130	China	Chloropicrin (5th Review)	Matthew Renkey (202) 482–2312.
A–570–895	731–TA–1070A	China	Crepe Paper (3rd Review)	Matthew Renkey (202) 482–2312.
A–570–900	731–TA–1092	China	Diamond Sawblades (2nd Review)	Mary Kolberg (202) 482–1785.
A–570–851	731–TA–777	China	Preserved Mushrooms (4th Review)	Mary Kolberg (202) 482–1785.
A–337–804	731–TA–776	Chile	Preserved Mushrooms (4th Review)	Mary Kolberg (202) 482–1785.
A–533–813	731–TA–778	India	Preserved Mushrooms (4th Review)	Mary Kolberg (202) 482–1785.
A–560–802	731–TA–779	Indonesia	Preserved Mushrooms (4th Review)	Mary Kolberg (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *https://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[6]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[7]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19*, 85 FR 41363 (July 10, 2020).

[7] *See* 19 CFR 351.218(d)(1)(iii).

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 17, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–16879 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA321]

Marine Mammals; File No. 23932; Correction

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

ACTION: Notice; receipt of application; correction.

SUMMARY: On July 20, 2020, a notice was published in the **Federal Register** announcing that NMFS had received an application for a permit (File No. 23932) from the New York Genome Center, 101 Avenue of the Americas, New York City, NY 10013 [Responsible Party: Catherine Reeves]. That document contained an error regarding the number of individual humpback whales (*Megaptera novaeangliae*) from which samples were requested for import annually. This document corrects this error. All other information is unchanged.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The notice of receipt for a permit (85 FR 43818; July 20, 2020) contained an error in that it incorrectly noted that the applicant proposed to import biological samples from up to six individual humpback whales (East Australia distinct population segment) annually. In fact, the applicant has requested to import unlimited biological samples from a maximum of 10 individual humpback whales (East Australia distinct population segment) annually.

All other information contained in the document is unchanged.

Correction

In the **Federal Register** of July 20, 2020, in FR Doc. 2020–15565, on page 43818, in the second column, in the second paragraph under the **SUPPLEMENTARY INFORMATION** heading, the first sentence is corrected to read as follows:

The applicant has requested to import unlimited biological samples from a maximum of 10 individual humpback whales (East Australia distinct population segment) annually.

Dated: July 29, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–16859 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA301]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 70 Assessment Webinar III for Gulf of Mexico greater amberjack.

SUMMARY: The SEDAR 70 stock assessment process for Gulf of Mexico greater amberjack will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 70 Assessment Webinar III will be held Thursday, August 20, 2020, from 1 p.m. to 3 p.m., Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the data webinars, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 30, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–16915 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA331]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Joint Committee and Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, August 20, 2020 at 9 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at *https://attendee.gotowebinar.com/register/55113428730454027.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Joint Committee and Advisory Panel plan to discuss habitat-related aspects of regional offshore wind development, including essential fish habitat consultations, habitat mapping recommendations, and benthic survey guidance, including mechanisms for Council involvement. Updates on science planning, upcoming meetings, and specific projects. They will also receive an overview of aquaculture and submarine cable activities in New England, including environmental effects and best management practices for mitigating these effects. Identify next steps for drafting Council policies on these issues. Discuss plans for updated offshore wind policy. The Committee and Advisory Panel will recommend actions to ''reduce burdens on domestic fishing and to increase production within sustainable fisheries,'' as requested in the Executive Order on Promoting Seafood Competitiveness and Economic Growth. They also plan to discuss and recommend habitat-related work priorities for 2021. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: July 30, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–16917 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA319]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice; public meeting.

SUMMARY: The MAFMC's Spiny Dogfish Advisory Panel (AP) will meet to develop a Fishery Performance Report and/or other recommendations for spiny dogfish specifications.

DATES: The meeting will be held Wednesday, August 19, 2020, from 3 p.m. to 5 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar link is: *http://mafmc.adobeconnect.com/dogfishap2020/.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, MAFMC; telephone: (302) 526–5255. The MAFMC's website, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create a Fishery Performance Report by the MAFMC's Spiny Dogfish Advisory Panel. The report facilitates structured input from the Advisory Panel members into the specifications development process.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: July 30, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–16916 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA297]

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 application submitted by the Cape Cod Commercial Fishermen's Alliance for the renewal of an exempted fishing permit contains all of the required

information and warrants further consideration. This exempted fishing permit would allow two commercial fishing vessels participating in an electronic monitoring program to fish in the Southern New England Regulated Mesh Area with a 6-inch (15.24 cm) diamond mesh codend. 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 19, 2020.

ADDRESSES: You may submit written comments by the following method:

• *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''6–INCH MESH CODEND EM EFP.''

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232.

SUPPLEMENTARY INFORMATION: On June 5, 2020, the Cape Cod Commercial Fishermen's Alliance (Alliance) submitted an application for a renewal of an exempted fishing permit (EFP) which would exempt two trawl vessels from the codend minimum mesh size restriction in the Southern New England (SNE) Regulated Mesh Area (RMA), as found in 50 CFR 648.80(b)(2)(i), to conduct an exploratory fishing project. Fishermen have reported a seasonally appearing abundance of haddock in the SNE RMA, and a 6-inch (15.24-cm) diamond mesh codend is intended to increase harvest of haddock while reducing discards of flounder species, relative to the current codend minimum mesh size of 6.5 inches (16.51 cm).

We issued the fishing year 2019 EFP in December 2019, and the EFP ended on April 30, 2020. The study period under the 2019 EFP did not provide sufficient time for participating vessels to fish for haddock with the 6-inch (15.24-cm) diamond mesh codend. Vessels completed only one tow on a single trip with the gear and encountered no haddock. The Alliance submitted a renewal application so that exploratory fishing could be completed, and requests an expanded study period from September 1, 2020, through April 30, 2021. This would provide an opportunity for participating vessels to locate and fish for seasonally available haddock when present. This EFP would be identical to the EFP issued for the 2019 fishing year.

Participating vessels would conduct commercial fishing with the 6-inch (15.24-cm) diamond mesh codend in SNE, specifically statistical areas 537, 539, 611, and 613. The application estimates that each of the two vessels participating with the exemption from minimum codend mesh size would take 35 day-trips during the project. Of the 35 trips that each vessel plans to take during that time period, the number of trips taken with a 6-inch (15.24-cm) mesh codend under the proposed EFP would vary, based on the presence of haddock. On EFP trips, four to five hauls would be made per day, with each tow length averaging 2 to 3 hours. While on these trips, vessels may switch back to a standard 6.5-inch (16.51-cm) mesh cod-end to retain operational flexibility.

The applicant states that a switch from a 6.5-inch (16.51-cm) square mesh codend to the 6-inch (15.24-cm) diamond mesh codend would improve catch of haddock, a healthy stock, while reducing catch of several flounder species. Based on a codend mesh selectivity study which compared retention length and size selection range for 6.5- and 6-inch (16.51- and 15.24-cm) square and diamond mesh, the applicant additionally states that 6-inch (15.24-cm) diamond mesh is unlikely to retain undersized haddock (He, 2007).

The participating vessels must also participate in the audit-model electronic monitoring (EM) program, and participating vessels are required to use EM on 100 perfect of trips. Vessels must adhere to a vessel-specific monitoring plan detailing at-sea catch handling protocols. Vessels also submit haul-level electronic vessel trip reports (eVTR) with count and weight estimates for all groundfish discards. The Alliance would compare the discard data collected from trips taken by vessels fishing with a 6-inch (15.24-cm) diamond mesh codend to trips with the standard 6.5-inch (16.51-cm) mesh codend. The Alliance states that this comparison would also demonstrate the usefulness of EM systems as tools for research.

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.

References

He, P. (2007). Selectivity of large mesh trawl codends in the Gulf of Maine: I. Comparison of square and diamond mesh. Fisheries Research, 83(1), 44–59.

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

Dated: July 29, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–16867 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA284]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council/SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC) via webinar. See **SUPPLEMENTARY INFORMATION**.

DATES: The SSC meeting will take place from 9 a.m. to 12 p.m. on Wednesday, August 19, 2020.

ADDRESSES:

Meeting address: The meeting will be held via webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public via webinar as it occurs. Webinar registration is required. Information regarding webinar registration will be posted to the Council's website at: *http://safmc.net/safmc-meetings/scientific-and-statistical-committee-meetings/* as it becomes available. The meeting agenda, briefing book materials, and online comment form will be posted to the Council's website two weeks prior to the meeting. Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. Written comment to be considered by the SSC shall be provided to the Council office no later than one week prior to an SSC meeting. For this meeting, the deadline for

submission of written comment is 12 p.m., Wednesday, August 12, 2020.

The following agenda items will be addressed by the SSC during the meeting:

1. Review and approve Statements of Work for the 2023 Snowy Grouper and Tilefish stock assessments;

2. An update on the operational assessment and research track development;

3. Replace an open SSC representative seat on the Citizen Science Operations Committee;

4. Discussion of other business as needed.

The SSC will provide guidance to staff and recommendations for Council consideration as appropriate.

Multiple opportunities for comment on agenda items will be provided during SSC meetings. Open comment periods will be provided at the start of the meeting and near the conclusion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. Additional opportunities for comment on specific agenda items will be provided, as each item is discussed, between initial presentations and SSC discussion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. All comments are part of the record of the meeting.

Although non-emergency issues not contained in the meeting agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 30, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–16914 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV184]

Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Restoration Plan/Environmental Assessment #5: Living Coastal and Marine Resources—Marine Mammals and Oysters

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

ACTION: Notice of availability.

SUMMARY: The *Deepwater Horizon* Federal natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared a Final Restoration Plan/Environmental Assessment (RP/EA #5): Living Coastal and Marine Resources—Marine Mammals and Oysters. The Final RP/EA #5 describes, and, in conjunction with the associated Finding of No Significant Impact (FONSI), selects the preferred restoration projects considered by the Louisiana TIG to restore natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. The Federal Trustees of the Louisiana TIG have determined that the implementation of the Final RP/EA #5 is not a major Federal action significantly affecting the quality of the human environment within the context of the NEPA. They have concluded a FONSI is appropriate, and, therefore, an Environmental Impact Statement will not be prepared.

ADDRESSES: *Obtaining Documents:* You may download the Final RP/EA #5 at: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.* Alternatively, you may request a CD of the Final RP/EA #5 (see **FOR FURTHER INFORMATION CONTACT** below). Also, you may view the document at any of the public facilities listed in Appendix A of the Final RP/EA #5.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Mel Landry, NOAA Restoration Center, 225–425–0583, *mel.landry@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest off shore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Deepwater Horizon Federal and State natural resource trustees (Trustees) conducted the natural resource damage assessment (NRDA) for the *Deepwater Horizon* oil spill under OPA (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The *Deepwater Horizon* Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife

and Fisheries (LDWF), and Department of Natural Resources (LDNR);

- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are selected and implemented by the Louisiana TIG which is composed of the following Trustees: CPRA, LOSCO, LDEQ, LDWF, and LDNR NOAA, DOI, EPA, and USDA.

Background

Notice of Availability of the *Deepwater Horizon* Oil Spill Louisiana Trustee Implementation Group Draft Restoration Plan and Environmental Assessment #5: Marine Mammals and Oysters (Draft RP/EA #5) was published in the **Federal Register** at 85 FR 16078 on March 20, 2020. The Louisiana TIG hosted a public webinar on April 8, 2020, and the public comment period for the Draft RP/EA #5 closed on April 20, 2020. The Draft RP/EA #5 evaluated seven restoration alternatives: Two Marine Mammal alternatives, four Oyster project alternatives, and the No Action alternative in accordance with the OPA and the NEPA. The Louisiana TIG considered the public comments received on the Draft RP/EA #5 which informed the analyses and selection of four restoration projects for implementation in the Final RP/EA #5. A summary of the public comments received and the Trustees' responses to those comments are included in Chapter 6 of the Final RP/EA #5 and all correspondence received are provided in the DWH Administrative Record.

Overview of the Final RP/EA

The Final RP/EA is being released in accordance with the OPA, NRDA implementing regulations, and the NEPA. In the Final RP/EA #5, the Louisiana TIG selects the following preferred alternatives in the Marine Mammals and Oysters restoration types:

- Increasing Capacity and Expanding Partnerships along the Louisiana Coastline for Marine Mammal Stranding Response ($3,955,620).
- Enhancing Oyster Recovery Using Brood Reefs ($9,701,447).
- Cultch Plant Oyster Restoration Projects ($10,070,000).
- Hatchery-based Oyster Restoration Projects ($5,850,000).

The Louisiana TIG has examined the injuries assessed by the *Deepwater Horizon* Trustees and evaluated restoration alternatives to address the injuries. In the Final RP/EA #5, the Louisiana TIG presents to the public its plan for providing partial compensation for lost living coastal and marine resources. The selected projects are intended to continue the process of using restoration funding to replenish and protect marine mammals and oysters injured by the *Deepwater Horizon* oil spill. The total estimated cost of the selected projects is approximately $28,717,075.

The funding proposed for implementation of oyster restoration under the trustees' preferred alternatives represents a commitment of all remaining available funding for oyster restoration in the Louisiana Restoration Area. The programmatic structure of the proposed oyster cultch and brood reef projects would allow the trustees to continue to construct specific reef sites in the future. In alignment with the PDARP, the trustees may propose projects in the future that benefit oysters through the wetlands, coastal, and nearshore habitats restoration allocation. Additional restoration planning for marine mammals and other restoration types in the Louisiana Restoration Area will continue.

Administrative Record

The documents comprising the Administrative Record for the Final RP/EA #5 and FONSI can be viewed electronically at *http://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: July 30, 2020.

Carrie Selberg,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2020–16976 Filed 8–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces will take place.

DATES: Open to the public, Friday, August 21, 2020, from 11:00 a.m. to 3:30 p.m. EDT.

ADDRESSES: This public meeting will be held via teleconference. To access the teleconference dial: 410–874–6300, Conference Pin: 645–604–037.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DAC–IPAD, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the eighteenth public meeting held by the DAC–IPAD. At this meeting the Committee will deliberate and vote on the draft *Final Report on Investigative Case File Reviews for Military Penetrative Sexual Offense Cases Closed in Fiscal Year 2017.* Next, DAC–IPAD staff will provide the Committee with the status of the Committee's review and

assessment of racial and ethnic disparities in the investigation, prosecution, and conviction of Service members for sexual offenses involving adult victims within the military justice system as required by section 540I of the National Defense Authorization Act for Fiscal Year 2020. Finally, the Committee will receive updates from the DAC–IPAD Policy and Data Subcommittees.

Agenda: 11:00 a.m.–11:10 a.m. Public Meeting Begins—Welcome and Introduction; 11:10 a.m.–12:30 p.m. DAC–IPAD Staff Presentation to Committee, Committee Deliberations, and Committee Vote on the DRAFT *Final Report on Investigative Case File Reviews for Military Penetrative Sexual Offense Cases Closed in Fiscal Year 2017*; 12:30 p.m.–1:00 p.m. Lunch Break; 1:00 p.m.–2:30 p.m. DAC–IPAD Staff Presentation to Committee, Committee Deliberations, and Committee Vote on the DRAFT Final Report on Investigative Case File Reviews for Military Penetrative Sexual Offense Cases Closed in Fiscal Year 2017; 2:30 p.m.–2:45 p.m. Status of the Committee's Review and Assessment of Racial and Ethnic Disparities in the Investigation, Prosecution, and Conviction of Service Members for Sexual Offenses Involving Adult Victims within the Military Justice System as Required by Section 540I of the National Defense Authorization Act for Fiscal Year 2020; 2:45 p.m.–3:00 p.m. Policy Subcommittee Update; 3:00 p.m.–3:15 p.m. Data Subcommittee Update; 3:15 p.m.–3:30 p.m. Meeting Wrap-Up and Public Comment; 3:30 p.m. Public Meeting Adjourns.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public. This public meeting will be held via teleconference. To access the teleconference dial: 410–874–6300, Conference Pin: 645–604–037. Please consult the website for any changes to the public meeting date or time.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral presentations by members of the public will be permitted from 3:15 p.m. to 3:30 p.m. EST on August 21, 2020.

Dated: July 29, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–16930 Filed 8–3–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Chief Management Officer, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Open to the public Wednesday, August 5, 2020 from 1:00 p.m. to 5:00 p.m. Eastern Standard Time.

ADDRESSES: Due to the current guidance on combating the Coronavirus, the meeting will be conducted virtually or by teleconference only. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hill, Designated Federal Officer of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *jennifer.s.hill4.civ@mail.mil;* or by phone at (571) 342–0070.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Defense Business Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its meeting on August 5, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice reflecting an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Agenda: The Board will receive an update from the Mentor Protégé Program (MPP) Assessment Study Task Group, discuss potential future work, and receive briefings from senior DoD government officials on acquisition/sustainment and data. The meeting agenda and task group presentation will be made available prior to the meeting on the Board's website at: *https://dbb.defense.gov/Meetings/Meeting-August-2020/.*

Meeting Accessibility: Pursuant to Federal Advisory Committee Act and 41 CFR 102–3.140, this meeting is open to the public. Persons desiring to participate in the meeting are required to register. Attendance will be by virtual or teleconference only. To attend the meeting submit your name, organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Requests to attend the meeting must be received not later than 4:00 p.m. Eastern Standard Time, on Monday, August 3, 2020. Upon receipt of this information, a link will be sent to the email address provided which will allow virtual/teleconference attendance to the event. (The DBB will be unable to provide technical assistance to any user experiencing technical difficulties during the meeting.)

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Ms. Jennifer Hill, the Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written

comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven (7) business days prior to the meeting to be considered by the Board. The Designated Federal Officer will review all timely submitted written comments or statements with the Board Chair, and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow any member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Designated Federal Officer, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the Board Chair determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in the public meeting. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above will be invited to speak in the order in which the Designated Federal Officer received their requests. The Board Chair may allot a specific amount of time for comments. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: July 30, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–16938 Filed 8–3–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences will take place.

DATES: Partially open to the public Monday, August 3, 2020, from 8:30 a.m. to 11:30 a.m.

ADDRESSES: Both the open and closed portions of the meeting will be held online.

FOR FURTHER INFORMATION CONTACT: Annette Askins-Roberts, (Voice), 301–295–1960 (Facsimile), *annette.askins-roberts@uhuhs.edu* (Email). Mailing address is 4301 Jones Bridge Road, A1020, Bethesda, Maryland 20814. Website: *https://www.usuhs.edu/vpe/bor*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Board of Regents, Uniformed Services University of the Health Sciences was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its meeting of August 3, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of USU. These actions are necessary for USU to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The schedule includes recommendations for degree conferrals, faculty appointments and promotions, and faculty and student awards presented by the deans of USU's schools and colleges; a report by the USU President on recent actions affecting academic and operational aspects of USU; a report from the Assistant Secretary of Defense for Health Affairs about the Military Health System; a member report covering an academics summary (consisting of submissions from the School of Medicine, Graduate School of Nursing, Postgraduate Dental College, and College of Allied Health Sciences); a member report covering the Armed Forces Radiobiology Research Institute; a report from the Brigade Commander; a report from the Senior Vice President Campus South, Senior Vice President Campus West, and Office of the Vice President for Research; a report from the Faculty Senate; a report from the Henry M. Jackson Foundation; a report from the Office of General Counsel. Reviews of administrative matters of general consent (*e.g.,* minutes approval, degree conferrals, faculty appointments and promotions, award recommendations, etc.) electronically voted on since the previous Board meeting on May 15, 2020. A closed session will be held following the open session to discuss active investigations and personnel actions.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165), the meeting will be held online and is open to the public from 8:00 a.m. to 10:50 a.m. Members of the public wishing to observe the meeting should contact External Affairs via email at *usu_external_affairs@usuhs.edu* no later than 2 business days prior to the meeting. Pursuant to 5 U.S.C. 552b(c)(2, 5–7), the DoD has determined that the portion of the meeting from 11:00 a.m. to 11:30 a.m. shall be closed to the public. The USD(P&R), in consultation with the DoD Office of General Counsel, has determined in writing that this portion of the Board's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations of a person having committed a crime or censuring an individual, and may

disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to the USU External Affairs email address at *usu_external_affairs@usuhs.edu.* Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least 5 calendar days prior to the meeting. Otherwise, the comments may not be provided to or considered by the Board until a later date. The DFO will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: July 29, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–16927 Filed 8–3–20; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 12, 2020. A business meeting will be held the following month on Wednesday, September 10, 2020. Both the hearing and the business meeting are open to the public. In light of COVID–19 mitigation measures in effect for DRBC member states, however, both meetings will be conducted remotely. Please check the Commission's website, *www.drbc.gov,* on or after July 29, 2020 for details about the meeting formats and how to attend.

Public Hearing. The public hearing will take place by telephone on August 12, 2020, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources as well as resolutions to: (a) Adopt the Commission's current expense and capital budgets for the fiscal year ending June 30, 2021; and (b) apportion among the signatory parties the amounts required for the support of the current expense and capital budgets for the fiscal year ending June 30, 2021.

The list of projects scheduled for hearing, including project descriptions, and the text of the proposed resolutions will be posted on the Commission's website, *www.drbc.gov,* in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on August 12, 2020 will be accepted through 5 p.m. on August 17, 2020.

The public is advised to check the Commission's website periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Public Meeting. The public business meeting on September 10, 2020 will begin at 10:30 a.m. and will include: Adoption of the Minutes of the Commission's May 13, 2020 Business Meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; resolutions to: (a) Adopt the Commission's annual current expense and capital budgets for the fiscal year ending June 30, 2021; and (b) apportion among the signatory parties the amounts required for the support of the current expense and capital budgets for the fiscal year ending June 30, 2021; and consideration of any items for which a hearing has been completed or is not required.

After all scheduled business has been completed and as time allows, the Business Meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the September 10 Business Meeting on items for which a hearing was completed on August 12 or a previous date. Commission consideration on September 10 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on August 12 or to address the Commissioners informally during the Open Public Comment portion of the meeting on September 10 as time allows, are asked to sign-up in advance through EventBrite. Links to EventBrite for the Public Hearing and the Business Meeting are available at *www.drbc.gov.* For assistance, please contact Ms. Patricia Hausler of the Commission staff, at *patricia.hausler@drbc.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at *www.drbc.gov.* Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628–0360. For assistance, please contact Patricia Hausler at *patricia.hausler@drbc.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Denise McHugh, 609–883–9500, ext. 240. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager at 609–883–9500, ext. 264.

Dated: July 22, 2020.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2020–16870 Filed 8–3–20; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2020–OCIO–0058]

Privacy Act of 1974; System of Records

AGENCY: Office of the Chief Information Officer, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''Department of Education Cybersecurity Excellence Award'' (18–04–05). Pursuant to Executive Order 13870 of May 2, 2019, as published in the **Federal Register** on May 9, 2019 (Executive Order 13870), the Department has developed and implemented, consistent with applicable law, an annual Department of Education Cybersecurity Excellence Award to recognize Department employees and contractors for outstanding performance and achievements in the areas of cybersecurity and cyber-operations. The Department will solicit applications and nominations for one individual or team of individuals to be annually awarded the Department of Education Cybersecurity Excellence Award.

DATES: Submit your comments on this new system of records notice on or before September 3, 2020.

This new system of records will become applicable upon publication in the **Federal Register** on August 4, 2020, unless the new system of records notice needs to be changed as a result of public comment. All proposed routine uses in the paragraph entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' will become applicable on September 3, 2020, unless the new system of records notice needs to be changed as a result of public comment. The Department will publish any significant changes to the system of records or routine uses that result from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''Help'' tab.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this new system of records, address them to: Peter Hoang, Information Assurance Services, Office of the Chief Information Officer, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Peter Hoang, Information Assurance Services, Office of the Chief Information Officer, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202. Email: *Peter.Hoang@ed.gov.* Phone: (202)245–6923.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The information maintained in this system will be used to (1) review and evaluate applications and nominations of individual candidates and teams including, but not limited to, assessing individual candidate and team eligibility in order to select one individual candidate or team of indivuals to whom the Department will present, on an annual basis, the Department of Education Cybersecurity Excellence Award, and two individual candidates or teams of individuals to whom the Department will present, on an annual basis, honorable mentions; (2) develop and implement the Department of Education Cybersecurity Excellence Award program's annual recognition component; and, (3) carry out the responsibilities set forth in section 2(d) of Executive Order 13870.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Jason Gray,

Chief Information Officer, Office of the Chief Information Officer.

For the reasons discussed in the preamble, the Chief Information Office, U.S. Department of Education (Department), publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

Department of Education Cybersecurity Excellence Award (18–04–05).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Information Assurance Services, Office of the Chief Information Officer, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

SYSTEM MANAGER(S):

Chief Information Security Officer, Information Assurance Services, Office of the Chief Information Office, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13870 of May 2, 2019, entitled, ''America's Cybersecurity Workforce,'' as published in the **Federal Register** at 84 FR 20523 (May 9, 2019) (Executive Order 13870).

PURPOSE(S) OF THE SYSTEM:

The records maintained in this system will be used to (1) review and evaluate applications and nominations of individual candidates and teams including, but not limited to, assessing individual candidate and team eligibility in order to select one individual candidate or team of individuals to whom the Department will present, on an annual basis, the Department of Education Cybersecurity Excellence Award, and two individual candidates or teams of individuals to whom the Department will present, on an annual basis, honorable mentions; (2) develop and implement the Department of Education Cybersecurity Excellence Award program's annual recognition component; and, (3) carry out the responsibilities set forth in section 2(d) of Executive Order 13870.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on employees and contractors of the Department who apply for or are nominated for the Department of Education Cybersecurity Excellence Award.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records about each applicant or nominee, including those who are part of a team that applies or is nominated, for the Department of Education Cybersecurity Excellence Award including, but not limited to, their: (1) Name; (2) organization and/or branch name; (3) job title; (4) narrative statement of accomplishments in cybersecurity innovations, team (stakeholder) collaboration, tool implementation, process development, cybersecurity training, and cybersecurity market research and product solutions; and, (5) work address, work email address, and work contact number.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from Department employees and contractors who apply or are nominated, individually or as part of a group (team), by their Department peers or Department leadership for the Department of Education Cybersecurity Excellence Award. Information also may be obtained from other persons or entities from which data is obtained under the routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose(s) for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Programmatic Purposes.* The Department may disclose information from this system of records as part of the Department's review and evaluation of candidate applications and nominations, and in order to promote the selection and recognition of recipients of the Department of Education Cybersecurity Excellence Award and honorable mentions, along with the visibility of the award program itself, to the following entities for the purposes specified:

(a) *Disclosures to the General Public Announcing each Awardee and Honorable Mention Recipient.* The Department may disclose to the general public, via the Department's website, the name and accomplishments of each awardee and honorable mention recipient.

(b) *Disclosures to Individuals and Entities Assisting the Department in Arranging Awardee and Honorable Mention Recipient Accommodations, Transportation, and Other Services.* The Department may provide information from this system of records to individuals and entities, such as vendors, in preparation for and in connection with the awards ceremony held, annually, by the Department in Washington, DC, and related educational and celebratory activities.

(c) *Disclosures to the White House and Federal Agencies for Briefings, Speechwriting, or to Obtain Security Clearances.* The Department may disclose awardee and honorable mention recipient information from this system of records to the White House and Federal agencies for any speechwriting and briefings for officials addressing the awardees, honorable mention recipients, or guests at recognition events, or to permit awardees and honorable mention recipients to obtain security clearances to attend such events or to gain entry into buildings with limited access, as appropriate.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed or has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that it is relevant and necessary to the litigation or ADR to disclose certain records to an adjudicative body, whether judicial or administrative, before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may

disclose records from this system of records to the DOJ or the Office of Management and Budget (OMB) if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(5) *Disclosure to the DOJ.* The Department may disclose records from this system of records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the Department of Education Cybersecurity Excellence Award.

(6) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose information from the record of an individual to a member of Congress and to his or her staff in response to an inquiry from the member (or from the member's staff) made at the written request of that individual. The member's right to access the information is no greater than the right of the individual who made the written request to such member.

(9) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(10) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained on an access-controlled electronic system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by the applicant's or nominee's name and year of application or nomination, as applicable.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department shall submit a retention and disposition schedule that covers the records contained in this system to the National Archives and Records Administration (NARA) for review. The records will not be destroyed until such time as NARA approves said schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All physical access to the Department site where this system of records is maintained and the sites of the Department's staff and contractors with access to the system is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer systems employed by the Department and its contractors offer a high degree of security against tampering and circumvention. These security systems limit data access to Department and contract personnel on a ''need to know'' basis and control individual users' ability to access and alter records within the system.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars, such as your name and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. You must provide necessary particulars, such as your name and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars, such as your name and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2020–16855 Filed 8–3–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2526–000]

Weaver Wind Maine Master Tenant, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Weaver Wind Maine Master Tenant, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that

such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16940 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2510–000]

Odom Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Odom Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16944 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2524–000]

Weaver Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Weaver Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://*

www.ferc.gov. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16945 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2466–035]

Appalachian Power Company; Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application non-capacity amendment of license.

b. *Project No.:* 2466–035.

c. *Date Filed:* July 15, 2020.

d. *Licensee:* Appalachian Power Company.

e. *Name of Project:* Niagara Hydroelectric Project.

f. *Location:* The project is located on the Roanoke River in Roanoke County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Elizabeth Parcell, Appalachian Power Company, P.O. Box 2021, Roanoke, VA 24011, (540) 985–2441 *ebparcell@aep.com.*

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, interventions, and protests Deadline for filing comments, motions to intervene, and protests:* August 28, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2466–035. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to replace the existing bottom-hinged, leaf-type gate and hoist system in the sluice structure at the dam with a bottom-hinged, inflatable Obermeyer (pneumatically actuated) gate and operating system. The gate replacement is needed to improve project operations and allow for remote operation to directly control the reservoir surface elevation and provide required minimum flows. No ground disturbing activities are proposed.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16947 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–13–000]

Orlando Utilities Commission; Notice of Filing

Take notice that on July 15, 2020, the Orlando Utilities Commission submitted its tariff filing: Revised Non-Jurisdictional Rate Sheets OATT (Schedules 7 & 8, Attachment H) to be effective 10/1/2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on August 5, 2020.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16941 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–983–001.

Applicants: Gulf South Pipeline Company, LLC.

Description: Gulf South Pipeline Company, LLC submits tariff filing per 154.205(b): Amendment to Docket No. RP20–983–000 to be effective 7/1/2020 under RP20–983.

Filed Date: 07/21/20.

Accession Number: 20200722–5000.

Comments Due: 5pm ET 8/3/20.

Docket Numbers: RP20–1044–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 072820 Negotiated Rates—Emera Energy Services, Inc. R–2715–42 to be effective 9/1/2020.

Filed Date: 7/28/20.

Accession Number: 20200728–5031.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: RP20–1045–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Chevron K911109 releases—eff 8–1–2020 to be effective 8/1/2020.

Filed Date: 7/28/20.

Accession Number: 20200728–5090.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: RP20–1046–000.

Applicants: Elba Express Company, L.L.C.

Description: § 4(d) Rate Filing: Interim Update of Fuel Retention Rates—2020 to be effective 9/1/2020

Filed Date: 7/29/20.

Accession Number: 20200729–5021.

Comments Due: 5 p.m. ET 8/10/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16951 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2515–000]

SR Georgia Portfolio I MT, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced SR Georgia Portfolio I MT, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the

FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16950 Filed 8–3–20; 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 exempt wholesale generator filings:

Docket Numbers: EG20–220–000.

Applicants: East Line Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of East Line Solar, LLC.

Filed Date: 7/28/20.

Accession Number: 20200728–5121.

Comments Due: 5 p.m. ET 8/18/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2666–004.

Applicants: Avalon Solar Partners, LLC, Gulf Coast Solar Center III, LLC, Gulf Coast Solar Center II, LLC, Nicolis, LLC, Tropico, LLC.

Description: Compliance filing: Notice of Non-Material Change in Status and Revised MBR Tariffs to be effective 7/30/2020.

Filed Date: 7/29/20.

Accession Number: 20200729–5077.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER16–2501–002.

Applicants: Nicolis, LLC, Tropico, LLC, Avalon Solar Partners, LLC, Gulf Coast Solar Center III, LLC, Gulf Coast Solar Center II, LLC.

Description: Compliance filing: Notice of Non-Material Change in Status and Revised MBR Tariffs to be effective 7/30/2020.

Filed Date: 7/29/20.

Accession Number: 20200729–5073.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER16–2502–002.

Applicants: Avalon Solar Partners, LLC, Nicolis, LLC, Gulf Coast Solar Center II, LLC, Gulf Coast Solar Center III, LLC, Tropico, LLC.

Description: Compliance filing: Notice of Non-Material Change in Status and Revised MBR Tariffs to be effective 7/30/2020.

Filed Date: 7/29/20.

Accession Number: 20200729–5066.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER17–1671–002; ER17–1672–002.

Applicants: Gulf Coast Solar Center II, LLC, Gulf Coast Solar Center III, LLC.

Description: Notice of Non-Material Change in Status of Gulf Coast Solar Center II, LLC.

Filed Date: 7/29/20.

Accession Number: 20200729–5126.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER19–1664–003; ER19–1665–003; ER20–76–003; ER19–1666–003; ER10–1992–022.

Applicants: Refresh Wind, LLC, Refresh Wind 2, LLC, Tehachapi Plains Wind, LLC, Terra-Gen 251 Wind, LLC, Victory Garden Phase IV, LLC.

Description: Notice of Non-Material Change in Status of Refresh Wind, LLC, et al.

Filed Date: 7/29/20.

Accession Number: 20200729–5156.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER19–1920–003.

Applicants: Tampa Electric Company.

Description: Compliance filing: Third Compliance Filing under Order Nos. 845 and 845A to be effective 5/22/2019.

Filed Date: 7/29/20.

Accession Number: 20200729–5041.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER20–2153–001.

Applicants: Sanford Airport Solar, LLC.

Description: Tariff Amendment: Amendment to the MBR Application of Sanford Airport Solar, LLC to be effective 8/24/2020.

Filed Date: 7/28/20.

Accession Number: 20200728–5136.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2527–000.

Applicants: Liberty Utilities (Granite State Electric) Corp.

Description: § 205(d) Rate Filing: Borderline Sales Rate Sheet Update Revised per PUC Order July 2020 to be effective 7/1/2020.

Filed Date: 7/28/20.

Accession Number: 20200728–5132.

Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2528–000.

Applicants: Airport Solar LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 8/1/2020.

Filed Date: 7/29/20.

Accession Number: 20200729–5012.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER20–2529–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Taygete II 2nd Amended Generation Interconnection Agreement to be effective 7/17/2020.

Filed Date: 7/29/20.

Accession Number: 20200729–5037.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER20–2530–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5688; Queue No. AF1–192 to be effective 6/29/2020.

Filed Date: 7/29/20.

Accession Number: 20200729–5040.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER20–2531–000.

Applicants: Midcontinent Independent System Operator, Inc, Michigan Electric Transmission Company, LLC, Consumers Energy Company.

Description: § 205(d) Rate Filing: 2020–07–29_SA 1926 & SA 3536 METC–CE DTIA and TSA to be effective 12/31/9998.

Filed Date: 7/29/20.

Accession Number: 20200729–5043.

Comments Due: 5 p.m. ET 8/19/20.

Docket Numbers: ER20–2532–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX—Texas-New Mexico Power 4th Amended Interconnection Agreement to be effective 7/20/2020.

Filed Date: 7/29/20.
Accession Number: 20200729–5046.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2533–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5691; Queue No. AF1–194 to be effective 6/30/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5049.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2534–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Concho Valley EC-Golden Spread EC 3rd Amended Interconnection Agreement to be effective 7/20/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5051.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2535–000.
Applicants: Duke Energy Ohio, Inc.
Description: § 205(d) Rate Filing: DEO–AEP—RS 272—Agreement for Transmission Service Billing for Retail Load to be effective 9/28/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5065.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2536–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Tri-State Rate Schedule No. 129 to be effective 2/26/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5068.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2537–000.
Applicants: Crowned Ridge Wind, LLC.
Description: Baseline eTariff Filing: Crowned Ridge Wind, LLC Filing of Assignment, Co-Tenancy and SFA to be effective 8/6/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5105.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2538–000.
Applicants: Midcontinent Independent System Operator, Inc, Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: 2020–07–29_SA 2376 METC-Lowell Light & Power 2nd Rev IFA to be effective 9/28/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5106.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2539–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: Dynamic Transfer Agreement RS–270—DEF, Winter Park, FPMA, FMPP to be effective 10/1/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5124.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2540–000.
Applicants: California Ridge Wind Energy LLC.
Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the Central Region and Revised MBR Tariff to be effective 7/30/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5131.
Comments Due: 5 p.m. ET 8/19/20.
Docket Numbers: ER20–2541–000.
Applicants: Entergy Louisiana, LLC.
Description: § 205(d) Rate Filing: ELL JWLPS Reactive to be effective 10/1/2020.
Filed Date: 7/29/20.
Accession Number: 20200729–5133.
Comments Due: 5 p.m. ET 8/19/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16942 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10821–005]

Pacific Gas and Electric Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License—Transmission Line Only.
b. *Project No.:* P–10821–005.
c. *Date filed:* June 27, 2019.
d. *Applicant:* Pacific Gas and Electric Company (PG&E).
e. *Name of Project:* Camp Far West Transmission Line Project.
f. *Location:* The existing transmission line project, with proposed modifications, would be located in Placer and Yuba Counties, California. The project would occupy a total of 52.3 acres and include tribal land managed by the U.S. Department of the Interior, Bureau of Indian Affairs (Auburn Off-Reservation Land Trust) and federal land managed by the U.S. Department of Defense (Beale Air Force Base).
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Mr. Robert Donovan, Senior Transmission Planner, Pacific Gas and Electric Company, 245 Market Street, Room 1053B, Mail Code N10A, San Francisco, California 94105.
i. *FERC Contact:* Quinn Emmering, (202) 502–6382, *quinn.emmering@ferc.gov.*
j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERC.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–10821–005.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of

that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The existing Camp Far West Transmission Line Project includes a 1.9-mile-long, three-phase, 60-kilovolt (kV) transmission line extending from the powerhouse of the Camp Far West Hydroelectric Project in Placer County to an interconnection with PG&E's 9-mile-long Smartville-Lincoln (formerly Smartville-Pleasant Grove) 60-kV transmission line. The Camp Far West Transmission Line Project is a transmission line only project; therefore, the project does not generate power, nor does it include any dams, diversions, or otherwise discharge to surface waters, nor does it include recreation facilities. The transmission line project annually transmits approximately 26,900 megawatt hours of energy generated at the project powerhouse for the Camp Far West Hydroelectric Project.

PG&E proposes to include the 9-mile-long Smartville-Lincoln 60-kV transmission line as a project facility in any subsequent license issued for the project. PG&E has determined that, while this segment of transmission line used to carry electricity from multiple sources, it now only carries electricity from the Camp Far West Hydroelectric Project to the integrated transmission system. Due to this, PG&E believes that the 9-mile-long segment should be considered part of the primary transmission line for the Camp Far West Hydroelectric Project and that it be incorporated into the Camp Far West Transmission Line Project. As proposed, the Camp Far West Transmission Line Project would consist of 10.9-mile-long, three-phase, 60-kV transmission line extending from the powerhouse of the Camp Far West Hydroelectric Project to the interconnection point located at Beale Air Force Base.

m. 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 website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document (*i.e.,* P–10821). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions	September 28, 2020
Licensee's Reply to REA Comments	November 11, 2020
Commission issues EA	April 2021
Comments on EA	May 2021
Commission issues license order	October 2021

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16949 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2512–000]

SR Baxley, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced SR Baxley, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16946 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2519–000]

East Line Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced East Line Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16943 Filed 8–3–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10010–89–OP]

National Environmental Justice Advisory Council; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required.

DATES: The NEJAC will convene a public teleconference meeting on Wednesday, August 19, 2020, and Thursday, August 20, 2020, starting at 3:00 p.m., Eastern Daylight Time. The meeting discussion will focus on several topics including, but not limited to, action items from the February 25–27, 2020, public meeting in Jacksonville, FL, and discussion and deliberation of a charge related to the reuse and revitalization of Superfund and other contaminated sites. One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday, August 19, 2020, starting at 3:30 p.m., Eastern Daylight Time. Members of the public who wish to participate during the public comment period must pre-register by 11:59 p.m., Eastern Daylight Time on Sunday, August 16, 2020.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the public meeting should be directed to Karen L. Martin, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW (MC2201A), Washington, DC 20460; by telephone at 202–564–0203; via email at *nejac@epa.gov.* Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

Registration: Registration is required for the August 19, 2020, and August 20, 2020, public teleconference meeting and will be processed at *https://nejac-august-2020-teleconference.eventbrite.com.* Registration for the meeting closes at 11:59 p.m., Eastern Daylight Time on

Sunday, August 16, 2020. The deadline to sign up to speak during the public comment period, or to submit written public comments, is 11:59 p.m., Eastern Daylight Time on Sunday, August 16, 2020. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments by the Sunday, August 16, 2020, deadline.

A. Public Comment

Individuals or groups making remarks during the public comment period will be limited to three (3) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by registration deadline, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at *nejac@epa.gov.*

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564–0203 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: July 21, 2020.

Matthew Tejada,

Director for the Office of Environmental Justice.

[FR Doc. 2020–16882 Filed 8–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2020–0282; FRL–10012–44–OW]

State Formula Allocations for Sewer Overflow and Stormwater Reuse Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the proposed allotment formula for the Sewer Overflow and Stormwater Reuse Municipal Grants Program as required by the Clean Water Act. EPA is required to establish a formula to allocate proportional shares of the amount appropriated to state entities to fund actions that will help manage combined sewer overflows, sanitary sewer overflows, and stormwater. EPA was directed to develop a formula based on the relevant infrastructure needs submitted in the latest Clean Watersheds Needs Survey along with additional information considered appropriate by the EPA Administrator. A summary of the formula is included in this document. This document announces that EPA is seeking feedback from the public on the formula.

DATES: Comments on these items must be received on or before September 3, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2020–0282, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this notification. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the section of this document.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Michael Goralczyk, Office of Water (Mail Code 4204M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–7347; or email: *Goralczyk.Michael@epa.gov* (preferred).

SUPPLEMENTARY INFORMATION:

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II. Background
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IV. Proposed Allotment Formula
V. Data Sources for the Proposed Allotment Formula
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I. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2020–0282, at *https://www.regulations.gov/.* Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The Agency will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be

received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

II. Background

The America's Water Infrastructure Act (AWIA) of 2018 aims to improve water quality, expand infrastructure investments, enhance public health, increase jobs, and bolster the economy. Section 4106 of the AWIA amended Section 221 of the Clean Water Act (CWA) to re-authorize the Sewer Overflow and Stormwater Reuse Municipal Grants Program. This amended statute directs EPA to award grants to the states, the District of Columbia, and U.S. territories (collectively referred to as ''states'') for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of:

1. Treatment works to intercept, transport, control, treat, or reuse municipal combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), or stormwater; and

2. any other measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water.

III. Statutory Language for the Allotment Formula

According to the CWA, funds appropriated for this program shall be allocated to the states according to their total proportional needs for municipal CSOs, SSOs, and stormwater as identified in the most recent Clean Watersheds Needs Survey (CWNS) and any other additional information considered appropriate by the EPA Administrator. This is described in Section 221(g)(2) of the CWA:

> ''the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2020 and each fiscal year thereafter for making grants to States under subsection (a)(1) in accordance with a formula to be established by the Administrator, after providing notice and an opportunity for public comment, that allocates to each State a proportional share of such amounts based on the total needs of the State for municipal combined sewer overflow controls, sanitary sewer overflow controls, and stormwater identified in the most recent detailed estimate and comprehensive study submitted pursuant to section 516 of this title and any other information the Administrator considers appropriate.''

The CWNS includes documented infrastructure needs. However, the most recent CWNS in 2012 did not include complete CSO, SSO, and stormwater infrastructure needs for every state and territory. In order to equitably allocate appropriated funds based on existing infrastructure needs, as directed in the amended Section 221 of the CWA, it is appropriate to include additional factors to fully characterize needs for CSOs, SSOs, and stormwater management. EPA consulted with state representatives and EPA regional coordinators experienced in managing EPA grants at the state level on a series of supplemental factors. With the feedback of these partners, EPA selected three additional factors based on the common availability of data across the states and the ability of these factors to serve as surrogates for CSO, SSO, and stormwater infrastructure needs. The three additional proposed factors are annual average precipitation, total population, and urban population. The rationale for these additional factors includes the following:

(1) Annual average precipitation is a proposed factor because higher amounts of precipitation lead to greater CSO, SSO, and stormwater infrastructure needs to manage greater flows.

(2) Total population is a proposed factor because the larger the population of a state, the more infrastructure is generally required to serve them.

(3) Urban population is a proposed factor because there are relatively higher CSO, SSO, and stormwater infrastructure needs in urban environments from increased impervious surfaces, which generate increased wet weather flows during precipitation events.

When combined with the needs determined in the CWNS, these three proposed factors improve the representation of the CSO, SSO, and stormwater infrastructure needs in each state. This collective approach for assessing CSO, SSO, and stormwater infrastructure needs is the basis for this proposal on how to derive an allocation formula for appropriating funds for this program.

IV. Proposed Allotment Formula

EPA is proposing to use the following methodology to allocate appropriated funds to the states for the Sewer Overflow and Stormwater Reuse Municipal Grant Program. A graphical depiction of the methodology is shown in Figure 1.

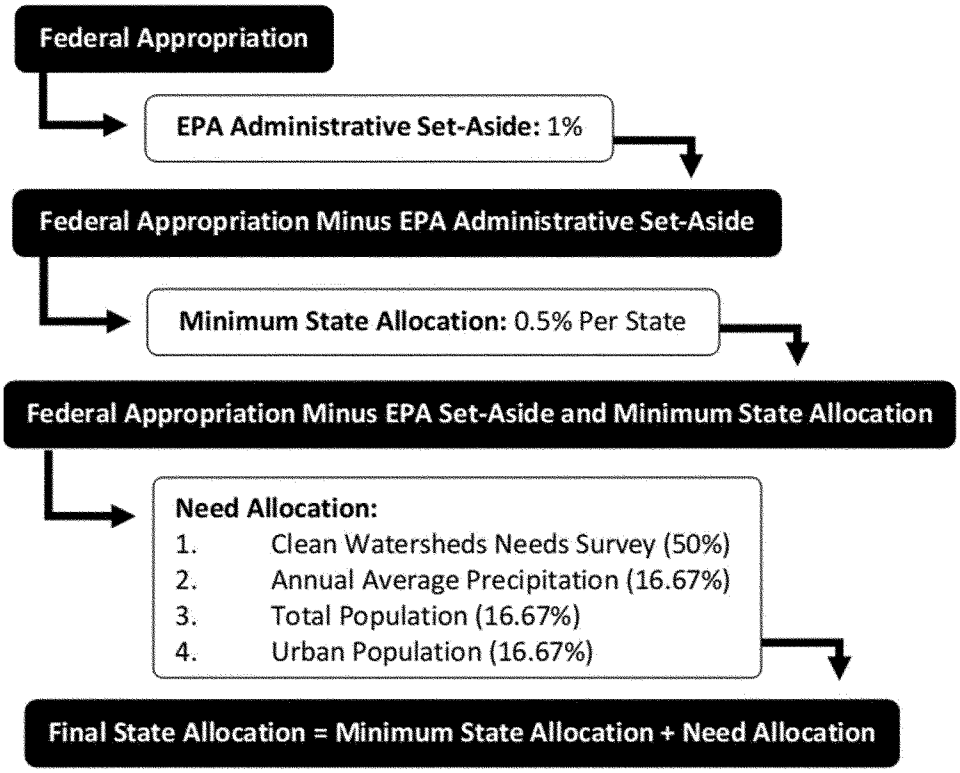

Fig. 1: Proposed Formula Structure for the Sewer Overflow and Stormwater Reuse Municipal Grant Program.

Proposed Methodology

1. Reserve 1% of the federal appropriation for EPA's administrative expenses per Section 221(h) of the CWA.

2. Allocate 0.5% of the remaining amount (federal appropriation minus EPA administrative set-aside) to each state to represent the ''minimum state allocation.''

3. Allocate the remaining amount (federal appropriation minus EPA administrative set-aside and minimum state allocation) based on several factors to characterize the ''need allocation'' of each state. In addition to the most recent CWNS and as allowed by Section 221(g)(2) of the CWA, EPA chose additional objective factors to help characterize the infrastructure needs of each state. EPA assigned weights to each of the factors in the allocation formula. The CWNS needs are weighted at 50% and the additional factors are weighted evenly to collectively account for the remaining 50%. The combination of the following factors forms the need allocation for each state.

- *Clean Watersheds Needs Survey:* This factor is included as the statute directs EPA to use the needs survey submitted pursuant to Section 516 of the CWA. EPA will use the latest available CWNS information that provides a comprehensive assessment of CSOs, SSOs, and stormwater infrastructure needs. This factor represents 50% of the need allocation as these needs were directly identified in the survey.
- *Annual Average Precipitation:* This factor is included to account for the volume of annual precipitation a state receives which suggests the amount of stormwater runoff that needs to be managed. This factor represents 16.67% of the need allocation.
- *Total Population:* This factor is included to represent the proportional need of each state's population size acknowledging that higher populations generally have greater infrastructure needs. This factor represents 16.67% of the need allocation.
- *Urban Population:* This factor is included to represent the needs that urban centers have for CSOs, SSOs, and stormwater management due to high concentrations of impervious surfaces. This factor represents 16.67% of the need allocation.

4. For each state, the minimum state allocation and the need allocation are combined to equal the final state allocation.

V. Data Sources for the Proposed Allotment Formula

- *Clean Watersheds Needs Survey:* The CWNS includes and documents identified capital investment needs for Sanitary Sewer Overflow Correction (Categories I–IV where states have shown a designated SSO need), Combined Sewer Overflow Correction (Category V), and Stormwater Management (Category VI). Information for this factor will be taken from the most recent published CWNS [1] and will be updated accordingly.
- *Annual Average Precipitation:* The proposed precipitation factor for each state is the annual average amount of precipitation collected from the past 10 years of data from the National Oceanographic and Atmospheric Association (NOAA) National Centers for Environmental Information, Climate at a Glance: Statewide Time Series. These data will be updated annually to form a 10-year rolling average.[2] Due to

[1] *Clean Watersheds Need Survey 2012 Report to Congress,* January 2016. *https://www.epa.gov/cwns/clean-watersheds-needs-survey-cwns-2012-report-and-data.*

[2] NOAA National Centers for Environmental information, Climate at a Glance: Statewide Time Series, accessed April 2020, *https://www.ncdc.noaa.gov/cag/statewide/time-series.*

data limitations, alternative data sources are proposed to be used for the following states:

—*Hawaii:* The past 10 years of data for annual average precipitation will be collected from the Hilo Area, Honolulu Area, Kahului Area, and Lihue Area from the Honolulu Forecast Office of NOAA.[3] These sources constitute the most complete data set in the relevant timeframe and are considered the best available representation for Hawaii.

—*District of Columbia:* The past 10 years of data for annual average precipitation will be collected from the Washington Area from the Baltimore/Washington Forecast Office of NOAA. This is the most complete data set in the relevant timeframe and is considered the best available representation for the District of Columbia.[4]

—*Puerto Rico:* The past 10 years of data for annual average precipitation will be collected from the San Juan Area and Ensenada and Morovis weather stations from the San Juan Forecast Office of NOAA. These sources constitute the most complete data set in the relevant timeframe and are considered the best available representation for Puerto Rico.[5]

—*American Samoa:* The past 10 years of data for annual average precipitation will be collected from the Pago Pago Area from the Pago Pago Forecast Office of NOAA. This is the most complete data set in the relevant timeframe and is considered the best available representation for American Samoa.[6]

—*Guam:* The past 10 years of data for annual average precipitation will be collected from the Guam Area from the Tiyan Forecast Office of NOAA. This is the most complete data set in the relevant timeframe and is considered the best available representation for Guam.[7]

—*Northern Mariana Islands:* The past 10 years of data for the annual average precipitation will be collected from the Guam Area from the Tiyan Forecast Office of NOAA. There are no available weather stations in the Northern Mariana Islands. However, the Northern Mariana Islands are covered by the Tiyan Forecast Office and Guam is located approximately 130 miles away. It has been determined that data from the Guam Area can be considered an acceptable surrogate for precipitation amounts in the Northern Mariana Islands.[8]

—*U.S. Virgin Islands:* The past 10 years of data for the annual average precipitation will be collected from the Christiansted Airport and St. Thomas weather stations from the San Juan Forecast Office of NOAA. These sources constitute the most complete data set in the relevant timeframe and are considered the best available representation for the U.S. Virgin Islands.[9]

▪ *Total Population:* Data for the proposed total population factor will be from the most recent published U.S. Census Bureau decennial census. The initial allocation will be based on the 2010 U.S. Census and will be updated accordingly.

—The states, the District of Columbia, and Puerto Rico population data will be taken from the U.S. Census Bureau State Population Totals and Components of Change.[10]

—American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands population data will be taken from the U.S. Census Bureau Island Area Tables.[11]

▪ *Urban Population:* The proposed urban population factor for each state will be based on the available data from the most recent U.S. Census Bureau decennial census.[12] The initial formula will be based on the 2010 U.S. Census and data will be updated as future decennial censuses are published. Urban population estimates for American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands are not available through the Census. The following alternative data sources will be used and updated as needed.

—*American Samoa:* Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 87.2%) will be multiplied by the total population.[13]

—*Guam:* Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 94.9%) will be multiplied by the total population.[14]

—*Northern Mariana Islands:* Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 91.8%) will be multiplied by the total population.[15]

—*U.S. Virgin Islands:* Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 95.9%) will be multiplied by the total population.[16]

VI. Request for Public Comment

It is important to EPA that its programs respond to the water quality needs of communities around the country. EPA seeks to ensure that the development of its grant programs complies with the applicable statutory language and legislative intent. EPA developed the proposed allotment formula for the Sewer Overflow and Stormwater Reuse Municipal Grants Program to best address CSO, SSO, and stormwater needs for each state as determined by the data from the latest CWNS and additional relevant factors. EPA is requesting comment on the methodology of this proposed allotment formula including the factors and data used in determining CSO, SSO, and stormwater infrastructure needs. Feedback on ways to more holistically assess CSO, SSO, and stormwater needs will be appreciated and evaluated for the initial and future formulas. EPA is also seeking input on the collection method, frequency, and source of the information used for the proposed allotment formula. EPA seeks to balance any burden the collection would impose on the public with the benefit the

[3] NOAA, Honolulu Forecast Office, Hilo Area, Honolulu Area, Kahului Area, and Lihue Area Data, *https://w2.weather.gov/climate/xmacis.php?wfo=hnl.*

[4] NOAA, Baltimore/Washington Forecast Office, Washington Area Data, *https://w2.weather.gov/climate/xmacis.php?wfo=lwx.*

[5] NOAA, San Juan Forecast Office, San Juan Area and Ensenada, and Morovis Weather Station Data. *https://w2.weather.gov/climate/xmacis.php?wfo=sju.*

[6] NOAA, Pago Pago Forecast Office, Pago Pago Area Data, *https://w2.weather.gov/climate/xmacis.php?wfo=samoa.*

[7] NOAA, Tivan Forecast Office, Guam Area Data, *https://w2.weather.gov/climate/xmacis.php?wfo=guam.*

[8] Ibid.

[9] NOAA, San Juan Forecast Office, Christiansted Airport and St. Thomas Weather Station Data, *https://w2.weather.gov/climate/xmacis.php?wfo=sju.*

[10] U.S. Census Bureau, State Population Totals and Components of Change 2010–2019, *https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html.*

[11] U.S. Census Bureau, 2010 Island Area Tables, *https://www.census.gov/data/tables/2010/dec/2010-island-areas.html.*

[12] U.S. Census Bureau, Census Urban and Rural Classification and Urban Area Criteria, *https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html.*

[13] Central Intelligence Agency, World Factbook, American Samoa, *https://www.cia.gov/library/publications/the-world-factbook/geos/aq.html.*

[14] Central Intelligence Agency, World Factbook, Guam, *https://www.cia.gov/library/publications/the-world-factbook/geos/gq.html.*

[15] Central Intelligence Agency, World Factbook, Northern Mariana Islands, *https://www.cia.gov/library/publications/the-world-factbook/geos/cq.html.*

[16] Central Intelligence Agency, World Factbook, U.S. Virgin Islands, *https://www.cia.gov/library/publications/the-world-factbook/geos/vq.html.*

information would provide to the Agency in making allocations to the states under the Sewer Overflow and Stormwater Reuse Municipal Grants Program.

David Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2020–16866 Filed 8–3–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 18–122, IB Docket No. 20–205; DA 20–802; FRS 16974]

Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7–4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Elections

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) releases the 3.7 GHz Transition Final Cost Category Schedule of Potential Expenses and Estimated Costs, announces the optional lump sum payment amounts for which incumbent Fixed Satellite Service earth station operators are eligible, and details the process and deadline for electing to receive lump sum payments.

DATES: Optional Lump Sum Elections are due August 31, 2020.

ADDRESSES: You may submit elections, identified by IB Docket No. 20–205, by any of the following methods:

- *Electronic Filers:* Elections may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* in docket number IB 20–205.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

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 20701.U.S.
- Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

FOR FURTHER INFORMATION CONTACT: Susan Mort, Wireless Telecommunications Bureau, at *Susan.Mort@fcc.gov* or 202–418–2429.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document (*Public Notice*), GN Docket No. 18–122, IB Docket No. 20–205; DA 20–802, released on July 30, 2020. The complete text of this document and the attached Cost Catalog is available on the Commission's website at *https://www.fcc.gov/document/wtb-releases-final-c-band-cost-category-and-lump-sum-public-notice* or by using the search function for GN Docket No. 18–122 or IB Docket No. 20–205 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file elections on or before the date indicated on the first page of this document.

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 & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

With the *Public Notice,* the Wireless Telecommunications Bureau (the Bureau) releases the 3.7 GHz Transition Final Cost Category Schedule of Potential Expenses and Estimated Costs (Cost Catalog), announces the optional lump sum payment amounts for which incumbent Fixed Satellite Service (FSS) earth station operators are eligible, and provides the process and deadline for electing to receive lump sum payments.

In the *3.7 GHz Band Report and Order,* the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use, plus a 20 megahertz guard band, throughout the contiguous United States by transitioning existing services out of the lower portion and into the upper 200 megahertz of the C-band. The *3.7 GHz Report and Order* established that new 3.7 GHz Service licensees will reimburse the reasonable relocation costs of eligible incumbents, including incumbent FSS earth station operators, to transition to the upper 200 megahertz of the band. The *3.7 GHz Report and Order* established that incumbent FSS earth station operators may either accept: (1) Reimbursement for their actual reasonable relocation costs by maintaining satellite reception; or (2) a lump sum reimbursement ''based on the average, estimated costs of relocating all of their incumbent earth stations'' to the upper 200 megahertz of the C-band. The *3.7 GHz Report and Order* directed the Bureau to establish a cost category schedule of the types of expenses that incumbents may incur.

The Commission engaged a third-party contractor, RKF Engineering Solutions, LLC (RKF), to assist in identifying costs that incumbents might incur and to assist with the development of a cost category schedule. With assistance from RKF, the Bureau developed the 3.7 GHz Transition Preliminary Cost Category Schedule of Potential Expenses and Estimated Costs (Preliminary Cost Catalog), which proposed classes of earth stations eligible for lump sum payments but did not specify the amounts. The Bureau sought comment on the earth station classes and specific costs and prices that should ultimately be included in the lump sums in the *Cost Catalog Public Notice.* In response, commenters proposed additional classes of earth stations, including a separate category for multichannel video programming distributor (MVPD) earth stations. Some commenters offered methodologies for calculating the lump sum amounts and proposed lump sum amounts. Commenters also identified additional transition costs to be included in the calculation, such as modulation and encoding technology.

After considering the comments received in response to the *Cost Catalog Public Notice,* the Bureau, with assistance from RKF, has updated the classes of earth stations and developed proposed lump sum amounts for each class of earth station. After review of the record, the Bureau issued the *Lump Sum Comment Public Notice* seeking further comment on a revised list of earth station classes, preliminary lump sum payment amounts, and the

methodology for calculating those amounts. After considering the comments in response to the *Cost Catalog Comment Public Notice* and the *Lump Sum Comment Public Notice,* the Bureau now releases the final Cost Catalog and lump sum payment amounts.

Final Cost Catalog. The *Public Notice* provides clarification and additional information on how reimbursement payments and lump sum amounts should be counted and on how to use the Cost Catalog. The *Public Notice* also describes several updates to the cost items and tables contained in the Cost Catalog that the Bureau, with assistance from RKF, determines to be expenses that incumbents are likely to incur in a typical transition. For example, in response to information from commenters, the Bureau clarifies or adds daily or monthly rental expenses for various items that we expect would be incurred in a typical transition. The final Cost Catalog also includes additional technical equipment components that were not originally included in the tables, but that parties persuasively argue are likely to be necessary to complete the transition. The final Cost Catalog also updates the cost estimates previously included in the preliminary cost catalog to account for reasonable changes proposed by commenters.

Lump Sum Payments. The Cost Catalog sets forth the amounts that will be available to incumbent earth station operators electing to receive a lump sum payment in place of their actual reasonable relocation costs. Consistent with the *3.7 GHz Report and Order,* the lump sum payment amounts are based on the average, estimated costs of transitioning incumbent earth stations to the upper 200 megahertz of the C-band. Consistent with the Bureau's proposed approach in the *Lump Sum Comment Public Notice,* the *Public Notice* and final Cost Catalog continue to use a variation of an expected value approach to calculate both the base lump sum payments as well as the technology upgrade installation costs for MVPD incumbent earth stations. Specifically, for both the base lump sum payments (for all antenna types) and for the per-site MVPD technology upgrade installation payment, where we determine that a cost would be part of a typical transition for a particular antenna type or class of earth station and not an outlier (in other words, where it meets a minimum threshold of likelihood that it would be incurred in a typical transition), we multiply the average estimated cost (calculated as the average of the range of costs included in the Cost Catalog) for that particular cost item by the probability that the particular antenna type or class of earth station is likely to incur it. While the methodology for calculating lump sums generally remains the same as described in the *Lump Sum Comment Public Notice,* such methodology accounts for the updates to the lump sum categories and amounts made in response to comments on the *Lump Sum Comment Public Notice.*

The lump sum amounts for all MVPD incumbent earth stations include the average, estimated costs associated with installing any necessary compression-related technology upgrades at an MVPD earth station site, but they do not include the cost to purchase the integrated receivers/decoders or transcoders for those technology upgrades. After review of the record, the Bureau finds that the selection and purchase of compression equipment for these technology upgrades—such as integrated receivers/decoders and transcoders—are an integral part of the satellite operators' nationwide transition process and, as such, they should be considered as part of the cost associated with the transition of satellite transponders. Thus, satellite operators, in cooperation with programmers, will be responsible for selecting, purchasing, and delivering the necessary compression equipment to respective earth stations. In contrast, the costs associated with physically installing the compression equipment at the earth station site are more appropriately assigned to the earth station operator (and are thus included in the MVPD lump sum amount), given that a satellite operator will not usually have direct access to an earth station site, and the earth station owner will be the one exercising direct control over that process. Accordingly, all MVPD earth station operators that elect the lump sum will receive the relevant lump sum base amounts, including the estimated costs to install integrated receivers/decoders and transcoders (including labor, cabling, and any necessary equipment for such installation, as described in more detail below). The installation costs for technology upgrades will be available to all MVPD earth station operators that elect the lump sum.

The *Public Notice* makes further updates to the lump sum categories, which are included in the Lump Sum Table of the Cost Catalog, to address additional information and arguments that commenters raise regarding the expected transition process. The Bureau clarifies that the lump sum base payments in the Lump Sum Table refer to each operational and registered antenna or dish at an incumbent earth station site (*i.e.,* each operational and registered antenna or dish included in an earth station IBFS registration, consistent with the requirements in the *3.7 GHz Report and Order*), with the above-described exception for MVPD technology upgrade installation lump sum claims (which are available on a per-site basis). Accordingly, an incumbent earth station operator's lump sum payments for each incumbent earth station site will be calculated by the amount listed in the Lump Sum Table for the relevant antenna multiplied by the number and type of antennas or dishes properly included in that incumbent earth station site's registration (and for MVPDs, will include the per-site technology upgrade installation amount). For example, if an incumbent earth station registration has two registered antennas that are ''receive only ES single-feed,'' an incumbent earth station operator would be eligible to receive the lump sum listed in the Lump Sum Table for both registered antennas associated with that particular earth station site (or registration), although only one technology upgrade installation payment (if the earth station operator is an MVPD).

The final Cost Catalog includes additional cost items in the lump sum amounts where the Bureau determined that those cost items are part of a typical transition for the relevant earth station class. For example, in response to information from commenters, the Bureau updates the lump sum base amounts to include application modification fees, the cost to purchase and install new feed horns on some dishes, as well as costs associated with system integration of modified earth stations. The Bureau also updates the base lump sum amounts for single-feed, multi-feed, and multi-beam antennas based on additional information in the record that demonstrates the likelihood that those antennas may require repointing to a different satellite and dual illumination during the transition. First, the Bureau increases the base lump amount for single-feed antennas to account for the costs of repointing to a different satellite (including dual illumination costs), which were not previously included in the proposed lump sum amount for that class of antennas. Second, based on information in the record, he Bureau adjusts the lump sum amounts for multi-feed and multi-beam antennas to account for a lower percentage of those antennas

needing dual illumination than previously estimated.

Finally, the *Public Notice* establishes the process for electing lump sum payments. Consistent with the *3.7 GHz Report and Order,* incumbent earth station owners must make their lump sum payment election no later than August 31, 2020. Because IBFS registrations do not contain sufficient information to determine the classes of earth stations/antennas that are registered at each earth station site or to determine whether an earth station site is an MVPD earth station, the Bureau requires earth station owners to certify that the information they provide in their lump sum election—including the antenna type and class of earth station—is accurate to the best of their knowledge.

Incumbent earth station owners choosing the lump sum election must file in IB Docket No. 20–205, with the following information for each of that operator's incumbent earth station sites:

1. Licensee/Registrant/Applicant Name,
2. Earth Station Callsign,
3. Site ID,
4. Antenna ID,
5. Number of antennas associated with that Antenna ID,
6. Site address,
7. GPS coordinates of the earth station,
8. File Number(s) of current authorization and/or pending application,
9. Confirmation that the earth station meets the definition of incumbent earth station under 47 CFR 27.1411(b)(3) and 25.138(c), including indication of whether earth station appears on the International Bureau's final list of eligible earth stations,[1]
10. Category of lump sum election for each registered antenna at that registered earth station site (*e.g.* Receive Only ES Single-feed; Receive Only ES Multi-feed; Small Multi-beam (2–4 beams) ES, etc.),
11. Whether earth station site is an MVPD earth station site (to claim the per-site technology upgrade installation amount),
12. Total lump sum amount claimed for that earth station (calculated by the number of registered antennas at that incumbent earth station multiplied by the relevant lump sum base amount, plus technology upgrade installation amount if MVPD), and
13. Whether the incumbent earth station will be transitioned to the upper 200 megahertz in order to maintain C-band services or will discontinue C-band services.

The lump sum election must include a certification from the incumbent earth station owner (if an individual) or a duly authorized representative with authority to bind the station, which certifies to the following:

1. That the information contained in the lump sum election is true and accurate to the best of the incumbent earth station owner (if an individual) or duly authorized representative knowledge;
2. That all earth stations for which the lump sum is being elected will not have ceased operation more than 90 days before the deadline for the lump sum election;
3. That, if the incumbent earth station owner intends to continue to receive content from a satellite operator after the transition at any of its earth station antennas, it accepts responsibility for undertaking the necessary transition actions in accordance with the timelines set forth in the satellite operators' Transition Plans;
4. That the incumbent earth station owner agrees to coordinate with the relevant space station operator as necessary to complete the transition;
5. An irrevocable release of claims for reimbursement for actual reasonable relocation costs from the Relocation Payment Clearinghouse, eligible satellite operators, or video programmers; and
6. An irrevocable release of claims against the payor and/or Commission with respect to any dispute about the amount received.

Federal Communications Commission.

Amy Brett,

Chief of Staff, Competition and Infrastructure Policy Division,Wireless Telecommunications Bureau.

[FR Doc. 2020–17058 Filed 8–3–20; 8:45 am]

BILLING CODE 6712–01–P

[1] *See International Bureau Releases Preliminary List of Incumbent Earth Stations in the 3.7–4.2 GHz Band in the Contiguous United States,* Public Notice, DA 20–703, at 1–2 (IB July 6, 2020). We note that the International Bureau will have released the final list of incumbent earth stations prior to the election deadline.

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 18–89; FCC 20–99; FRS 16963]

National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (Commission) finds it has already substantially complied with the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act) with the prohibition adopted in the *2019 Supply Chain Order.*

DATES: This Declaratory Ruling is applicable July 17, 2020.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Brian Cruikshank, Wireline Competition Bureau, *Brian.Cruikshank@fcc.gov,* 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling in WC Docket No. 18–89, FCC 20–99, adopted on July 16, 2020 and released July 17, 2020. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/implementing-secure-networks-act-0.* The Second Further Notice of Proposed Rulemaking that was adopted concurrently with this Declaratory Ruling will be published elsewhere in the **Federal Register**.

I. Introduction

1. America's communications networks have become the indispensable infrastructure of our economy and our everyday lives. The COVID–19 pandemic has demonstrated as never before the importance of these networks for employment and economic opportunity, education, health care, social and civic engagement, and staying connected with family and friends. It is therefore imperative that the Commission safeguards this critical infrastructure from potential security threats.

2. The Commission has taken a number of targeted steps in this regard. For example, in November 2019, the Commission prohibited the use of public funds from the Commission's Universal Service Fund (USF) to purchase or obtain any equipment or services produced or provided by companies posing a national security threat to the integrity of communications networks or the communications supply chain. The Commission also initially designated Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as covered companies for purposes of this rule, and the Commission established a process for designating additional covered companies in the future. Additionally, last month, the Commission's Public Safety and Homeland Security Bureau (PSHSB) issued final designations of Huawei and

ZTE as covered companies, thereby prohibiting the use of USF funds on equipment or services produced or provided by these two suppliers.

3. The Commission takes further steps to protect the nation's communications networks from potential security threats as it integrates provisions of the recently enacted Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act) into its existing supply chain rulemaking proceeding. The Commission adopts a Declaratory Ruling finding that, in the *2019 Supply Chain Order,* 85 FR 230, January 3, 2020, it fulfilled its obligation pursuant to section 3 of the Secure Networks Act to prohibit the use of funds made available through a Federal subsidy program administered by the Commission to purchase, rent, lease, or otherwise obtain or maintain any covered communications equipment or services from certain companies.

II. Declaratory Ruling

4. In the *2019 Supply Chain Order,* the Commission prohibited the use of universal service support for equipment and services produced or provided by companies designated as a national security threat. The Commission finds that its prohibition, codified in section 54.9 of the Commission's rules, is consistent with and substantially implements subsection 3(a) of the Secure Networks Act, which prohibits the use of federal funds on certain communications equipment and services. Accordingly, the Commission further finds that it has satisfied the requirements of section 3(b) in the Secure Networks Act and it needs not revisit or otherwise modify our prior action in the *2019 Supply Chain Order.*

5. Introduced prior to the adoption of the *2019 Supply Chain Order* and subsequently enacted on March 12, 2020, section 3(a) of the Secure Networks Act prohibits ''[a] Federal subsidy that is made available through a program administered by the Commission and that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service'' from being used either to ''purchase, rent, lease or otherwise obtain any covered communications equipment or service; or maintain any covered communications equipment or service . . . .'' The prohibition applies ''60 days after the date the Commission places such equipment or service on the list'' required by section 2(a) of the statute.

6. In section 3(b), Congress directed the Commission to adopt a Report and Order to implement this prohibition within 180 days following the Secure Networks Act's enactment. Section 3(b) further states, ''If the Commission has, before the date of the enactment of this Act, taken action that in whole or in part implements subsection (a), the Commission is not required to revisit such action, but only to the extent such action is consistent with this section.'' The Commission interprets the language in section 3(b) to mean that if it has, prior to the enactment of the Secure Networks Act, already adopted a prohibition on the use of Federal funds that substantially tracks the statutory prohibition, then the Commission is deemed to have satisfied the 180-day deadline contained in section 3(b) and need not revisit its prior action. To avail itself of this exception to the statutory deadline, however, the Commission's previously adopted prohibition must be ''consistent'' with, *i.e.,* compatible with, and must not conflict with, the requirements of section 3(a).

7. In the *2019 Supply Chain Order,* the Commission prohibited the use of universal service support to ''maintain, improve, modify, operate, manage, or otherwise support any equipment or services produced or provided by a company posing a national security threat to the integrity of the communications networks or the communications supply chain.'' The Commission also initially designated two companies, Huawei and ZTE, as companies posing a national security threat. PSHSB recently issued final designations of these entities, thereby prohibiting the use of USF funds to maintain, improve, modify, operate, manage, or otherwise support equipment or services produced or provided by Huawei and ZTE effective June 30, 2020.

8. The Commission's prohibition in the *2019 Supply Chain Order* is consistent with and substantially implements the prohibition required by section 3(a) of the Secure Networks Act. The Commission starts by noting that it administers two ongoing programs that provide a ''Federal subsidy'': the USF, a Federal subsidy program that subsidizes the cost of obtaining communications equipment and/or services for carriers serving high-cost areas, schools and libraries, rural health care providers, and low-income households, and the Interstate Telecommunications Relay Service Fund, a Federal subsidy program that subsidizes the cost of relay services for individuals who are deaf, hard of hearing, deaf/blind, or have a speech impediment. Given that the USF, unlike the Interstate Telecommunications Relay Service Fund, ''provides funds to be used for the capital expenditures necessary for the provision of advanced communications service,'' we believe Congress clearly intended the section 3 prohibition to apply to the USF.

9. The Commission also finds the scope of communications equipment and services covered by the Commission's prohibition encompasses the scope of the Secure Networks Act's section 3 prohibition. The Commission's prohibition broadly covers ''any equipment or services produced by any company posing a national security threat.'' In comparison, the prohibition in section 3 of the Secure Networks Act applies to ''any covered communications equipment or service.'' Covered communications equipment or service is limited to that which is capable of certain functions and capabilities or otherwise poses a security threat. Although the Commission's prohibition goes further than the requirements of the Secure Networks Act, it does not conflict with the statutory requirements of section 3(a). Accordingly, by complying with the Commission's broader prohibition, USF support recipients will be in compliance with the Secure Networks Act prohibition. Section 3(a) of the Secure Networks Act also specifies that the ban takes effect 60 days after the Commission places the equipment or service on the list required by section 2 of the statute. The Commission believes that rule 54.9 substantially implements this section 3 requirement by providing a notice period for interested parties (which, if opposed, the Commission would expect to last at least 60 days) and stating that the ban takes effect only when initial designations of covered companies are finalized. However, to the extent there are differences between the Commission's rules and section 3 of the Secure Networks Act, it seeks comment on additional changes to its rules.

10. With the Commission's adoption of the prohibition in the *2019 Supply Chain Order,* the Commission has substantially implemented the section 3 statutory mandate to adopt a prohibition on covered communications equipment or services. As such, the Commission avails ourselves of the proviso, set forth in section 3(b), not to revisit its prior action implementing the mandate. Nevertheless, in the concurrently adopted Further Notice, the Commission seeks comment on additional changes to its rules pursuant to section 3 of the Secure Networks Act.

III. Ordering Clause

11. It is further Ordered that, pursuant to Section 3 of the Secure Networks Act,

47 U.S.C. 1602 and the authority contained in Sections 1, 4(i), 201(b), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155(b), 155(c), 201(b), 214, 254, 303(r), and 403, and Sections 1.2 and 54.9 of the Commission's rules, 47 CFR 1.2 and 54.9, the Declaratory Ruling in WC Docket No. 18–89 *is adopted.*

12. It is further Ordered that the Declaratory Ruling is *effective* upon release.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–16884 Filed 8–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of the FDIC's Response to Exception Requests Pursuant To Recordkeeping for Timely Deposit Insurance Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of the FDIC's response to exception requests pursuant to the Recordkeeping for Timely Deposit Insurance Determination rule.

SUMMARY: In accordance with its rule regarding recordkeeping for timely deposit insurance determination, the FDIC is providing notice to covered institutions that it has granted a time-limited exception of up to 18 months concerning the information technology system requirements and general recordkeeping requirements for certain deposit accounts for sole proprietorships that the covered institution's information technology systems misclassify with an incorrect ownership right and capacity code and a time-limited exception of up to 12 months concerning the information technology system requirements and general recordkeeping requirements for limited number of joint deposit accounts that the covered institution has not confirmed are ''qualifying joint accounts'' for deposit insurance purposes.

DATES: The FDIC's grants of exception relief were effective as of July 28, 2020.

FOR FURTHER INFORMATION CONTACT: Benjamin Schneider, Section Chief, Division of Complex Institution Supervision and Resolution; *beschneider@fdic.gov;* 917–320–2534.

SUPPLEMENTARY INFORMATION: The FDIC granted two time-limited exception requests to a covered institution pursuant to the FDIC's rule entitled ''Recordkeeping for Timely Deposit Insurance Determination,'' codified at 12 CFR part 370 (part 370).[1] Part 370 generally requires covered institutions to implement the information technology system and recordkeeping capabilities needed to quickly calculate the amount of deposit insurance coverage available for each deposit account in the event of failure. Pursuant to section 370.8(b)(1), one or more covered institutions may submit a request in the form of a letter to the FDIC for an exception from one or more of the requirements of part 370 if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. Pursuant to section 370.8(b)(3), a covered institution may rely upon another covered institution's exception request which the FDIC has previously granted by notifying the FDIC that it will invoke relief from certain part 370 requirements and demonstrating that the covered institution has substantially similar facts and circumstances to those of the covered institution that has already received the FDIC's approval. The notification letter must also include the information required under section 370.8(b)(1) and cite the applicable notice published pursuant to section 370.8(b)(2). Unless informed otherwise by the FDIC within 120 days after receipt of a complete notification for exception, the exception will be deemed granted subject to the same conditions set forth in the FDIC's published notice.

These grants of relief may be rescinded or modified upon material change of circumstances or conditions related to the subject accounts, or upon failure to satisfy conditions applicable to each. These grants of relief will be subject to ongoing FDIC review, analysis, and verification during the FDIC's routine part 370 compliance tests. The FDIC presumes each covered institution is meeting all the requirements set forth in the Rule unless relief has otherwise been granted. The following exceptions were granted by the FDIC as of July 28, 2020.

I. Certain Deposit Accounts for Sole Proprietorships That the Covered Institution's Information Technology Systems Misclassify With an Incorrect Ownership, Right and Capacity Code

The FDIC granted a time-limited exception of up to 18 months from the information technology requirements set forth in section 370.3 and general recordkeeping requirements set forth in section 370.4(a) of the rule to allow a covered institution to perform system updates and remediation efforts to ensure certain sole proprietorship deposit accounts are correctly classified by its part 370 information technology system. The covered institution identified that the subject accounts were opened in a manner such that its information technology systems identified the accounts as being held under the BUS ownership right and capacity code. As a result, the institution must update its information technology systems to ensure the appropriate ownership right and capacity code of SGL is applied to the subject accounts.

In connection with the FDIC's grant of relief, the covered institution has represented that it will both perform information technology system updates and update policies to ensure current and future accounts for sole proprietorships are assigned the appropriate SGL ownership right and capacity code. The covered institution has represented that it will maintain the capability to place holds on the deposit accounts subject to the exception in the event of failure until a deposit insurance determination can be made and place all such accounts into the pending file of its part 370 output files during the relief period. As conditions of relief, the covered institution must submit a status report to *part370@fdic.gov* at the midpoint of the exception relief period and immediately bring to the FDIC's attention any change of circumstances or conditions.

II. A Limited Number of Joint Accounts for Which the Covered Institution Has Not Confirmed ''Qualifying Joint Account'' Status for Deposit Insurance Purposes Pursuant to 12 CFR Section 330.9

The FDIC granted a time-limited exception of up to 12 months from the information technology requirements set forth in section 370.3 and general recordkeeping requirements set forth in section 370.4(a) of the rule for a limited number of joint accounts that a covered institution has not confirmed are ''qualifying joint accounts'' entitled to separate deposit insurance coverage pursuant to 12 CFR 330.9(c).[2] The

[1] 12 CFR part 370.

[2] Pursuant to 12 CFR 330.9(c)(1), the following requirements must be met for a joint account to be a ''qualifying joint account'' entitled to separate deposit insurance coverage: (i) All co-owners of the funds in the account are ''natural persons'' (as defined in § 330.1(*l*)); (ii) each co-owner has personally signed, which may include signing electronically, a deposit account signature card, or the alternative method provided in paragraph (c)(4)

Continued

covered institution represented that it performed extensive review of joint account records to verify satisfaction of the signature-card requirement set forth in 12 CFR 330.9(c)(1)(ii). For the population of joint accounts without signature cards signed by each joint account owner, the covered institution conducted a multi-tiered remediation effort to determine whether an alternative method could be used to satisfy the signature-card requirement pursuant to 12 CFR 330.9(c)(4).[3]

Remediation included the utilization of software to digitally scan signature cards and development of a various technical solutions to review usage of joint deposit accounts by each co-owner.[4]

The covered institution represented that it could not verify whether a limited number of joint accounts (the ''subject accounts'') were ''qualifying joint accounts'' because it could not locate signed signature cards nor could it confirm that the signature-card requirement is satisfied via an alternative method. The FDIC granted this covered institution a time-limited exception to continue remediation efforts to verify the signature-card requirement is satisfied.

In connection with the FDIC's grant of relief, the covered institution has represented that it will place the subject accounts into the pending file of its part 370 output files and that access to all subject accounts can be restricted in the event of the covered institution's failure until qualifying joint account status is confirmed. As conditions of relief, the covered institution must: Within 30 days from the receipt of notification of the grant of relief, submit a plan to *part370@fdic.gov* detailing remediation efforts to meet the signature-card requirements of 12 CFR 330.9, such as outreach, manual review, disclosures, or digital analysis for the subject accounts; submit a status report to *part370@fdic.gov* by the midpoint of the exception relief period; and immediately bring to the FDIC's attention any change of circumstances or conditions.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 29, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–16899 Filed 8–3–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Courtney Killion, Director, Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Rachel Dickon,

Secretary.

The Members of the Performance Review Board Are

1. Carl W. Bentzel, Commissioner
2. Erin M. Wirth, Chief Administrative Law Judge
3. Mary T. Hoang, Chief of Staff
4. Florence A. Carr, Director, Bureau of Trade Analysis
5. Karen V. Gregory, Managing Director
6. Peter J. King, Deputy Managing Director

[FR Doc. 2020–16924 Filed 8–3–20; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*The Medical Expenditure Panel Survey (MEPS) Social and Health Experiences Self-Administered Questionnaire and COVID–19 Changes.*'' This proposed information collection was previously published in the **Federal Register** on May 7, 2020 and allowed 60 days for public comment. AHRQ received two substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by 30 days after date of publication of this notice.

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: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''*The Medical Expenditure Panel Survey (MEPS) Social and Health Experiences Self-Administered Questionnaire and COVID–19 Changes*''

The Medical Expenditure Panel Survey (MEPS) consists of the following three components and has been conducted annually since 1996:

- *Household Component (MEPS–HC):* A sample of households participating in the National Health Interview Survey (NHIS) in the prior calendar year are interviewed 5 times over a 2 and one-half (2.5) year period. These 5 interviews yield two years of information on use of, and expenditures for, health care, sources of payment for that health care, insurance status, employment, health status and health care quality.
- *Medical Provider Component:* The MEPS–MPC collects information from medical and financial records maintained by hospitals, physicians, pharmacies and home health agencies named as sources of care by household respondents.

of this section is satisfied; and (iii) each co-owner possesses withdrawal rights on the same basis.

[3] Pursuant to 12 CFR 330.9(c)(4), the signature-card requirement also may be satisfied by information contained in the deposit account records establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner.

[4] The covered institution provided a summary of 13 unique analyses performed to confirm ownership of joint accounts. Such analysis included the manual or systematic review of issued debit cards, issued checks, web banking ids, ACH transactions, safety deposit box records, or bank maintained call logs evidencing ownership of a joint account.

• *Insurance Component:* The MEPS–IC collects information on establishment characteristics, insurance offerings and premiums from employers. The MEPS–IC is conducted by the Census Bureau for AHRQ and is cleared separately.

This request is for the MEPS–HC only. The OMB Control Number for the MEPS–HC is 0935–0118, which was last approved by OMB on November 8, 2019, and will expire on November 30, 2022.

The purpose of this request is to integrate several items into the MEPS–HC including several new questions related to COVID–19 including telehealth/telemedicine questions into the computer assisted personal interviewing (CAPI) questionnaire and a new self-administered questionnaire (SAQ) entitled, ''Social and Health Experiences,'' into the MEPS. The questions on COVID–19 capture information on any delay in care due to COVID–19. The questions will be administered through a Reporting Unit (RU)-level gate question with follow up questions asked at the person level as appropriate. Telehealth/telemedicine will be administered as its own event type with questions and probes mirroring those used for in-person medical provider visits. This SAQ will include questions in a dual mode (web and paper) self-administered questionnaire about social and behavioral determinants of health including questions about housing affordability and quality, neighborhood characteristics, food security, transportation needs, financial strain, smoking and physical activity, and experiences with discrimination, social support, general well-being, personal safety, and adverse circumstances in childhood. The information collected will be used to examine the relationship between measures of the social determinants of health and measures of health status, and the use and expense of health care services. The goal of this survey is to help understand the relationship between social determinants of health and health care need in order to ultimately improve health care and health.

This study is being conducted by AHRQ through its contractors, Westat and RTI International, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b–2.

Method of Collection

Data collection will be for eligible adults (aged 18 and over). AHRQ proposes a dual-mode (web and paper) collection primarily to further protect respondents' privacy due to the sensitive nature of some of the items. Web completion will be the main mode with paper offered to those with barriers to internet access. In addition, due to COVID–19, in March of 2020, MEPS moved to telephone interviewing for all panels and rounds currently in the field with increased use of the web to facilitate respondent reporting; for example, the use of showcards. The current plan is resume at least some face-to-face interviewing during the fall rounds for Panels 23, 24, and 25. Moreover, Panels 23 and 24 are to be extended one year with the creation of Round 6 and 7 interviews in order to contribute to the data collected for data years 2020 and 2021. The data collected will offset any impact on response rates due to the pandemic or changes in primary mode for data collection.

The new CAPI questions collecting information about COVID–19, including telehealth, will be folded into the regular processing stream of MEPS data to produce estimates of health care utilization and expenditures.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for respondent's time to participate in this research. The addition of several questions related to COVID–19 and telehealth adds minimal burden in hours and costs to the core CAPI interview, estimated to add 1 minute per interview and a total of 222 burden hours. The SAQ will be completed during Round 1, Panel 26, Round 3, Panel 25, and Round 5, Panel 24 by each person in the RU that is an eligible adult, an estimated 27,059 persons, and takes about 7 minutes to complete. The total annualized burden for this SAQ is estimated to be 3,157 hours.

Exhibit 2 shows the estimated annualized cost burden associated with respondents' time to participate in this research. The total cost burden is estimated to be $82,244 annually ($5,403 for COVID–19 related research including telemedicine questions and the $76,841 for the SAQ.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
COVID–19 and Telehealth (telemedicine) questions included in the MEPS questionnaire	*13,338	1	1/60	222
Social and Health Experiences SAQ; Adult SAQ—Year 2021	27,059	1	7/60	3,157
Total	40,397	n/a	n/a	3,379

*While the expected number of responding units for the annual estimates is 12,804, it is necessary to adjust for survey attrition of initial respondents by a factor of 0.96 (13.338 = 12/804/0.96).

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
COVID–19 and Telehealth (telemedicine) questions included in the MEPS questionnaire	13,338	222	$24.34	$5,403
Social and Health Experiences SAQ (SDOH); Adult SAQ—Year 2021	27,059	3,157	24.34	76,841
Total	40,397	3,379	n/a	82,244

*Mean hourly wage for All Occupations (00–0000).

Occupational Employment Statistics, May 2017 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 30, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–16948 Filed 8–3–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970–0171]

Proposed Information Collection Activity; Voluntary Acknowledgment of Paternity and Required Data Elements for Paternity Establishment Affidavits

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is requesting a 3-year extension of the Voluntary Acknowledgment of Paternity and Required Data Elements for Paternity Establishment Affidavits (OMB #0970–0171). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 466(a)(5)(C) of the Social Security Act requires states to enact laws ensuring a simple civil process for voluntarily acknowledging paternity via an affidavit. The development and use of an affidavit for the voluntary acknowledgment of paternity would include the minimum requirements of the affidavit specified by the Secretary of Health and Human Services under section 452(a)(7) of the Social Security Act and give full faith and credit to such an affidavit signed in any other state according to its procedures. The state must provide that, before a mother and putative father can sign a voluntary acknowledgement of paternity, the mother and putative father must be given notice, orally and in writing of the alternatives to, the legal consequences of, and the rights (including any rights, if one parent is a minor, due to minority status) and responsibilities of acknowledging paternity. The affidavits will be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program to collect information from the parents of nonmarital children.

Respondents: The parents of nonmarital children, state and tribal agencies operating child support programs under Title IV–D of the Social Security Act, hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average annual burden hours per response	Annual burden hours
Training	134,685	1	1	134,685
Paternity Acknowledgment Process	1,471,079	1	0.17	250,083
Data Elements	54	1	54	54
Ordering Brochures	2,693,695	1	.08	215,496

Estimated Total Annual Burden Hours: 600,318.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 666(a)(5)(C) and 652(a)(7).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–16893 Filed 8–3–20; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970–0196]

Proposed Information Collection Activity; Multistate Financial Institution Data Match With Federally Assisted State Transmitted Levy

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families' (ACF) Office of Child Support Enforcement (OCSE) is requesting a 3-year extension of the currently approved Multistate Financial Institution Data Match with Federally Assisted State Transmitted Levy (MSFIDM/FAST Levy) (current OMB approval expires 1/31/2021).

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: State child support enforcement agencies are statutorily required to enter into data matching agreements with financial institutions doing business in their state to locate obligors' accounts. OCSE operates the MSFIDM program through the Federal Parent Locator Service (FPLS) and facilitates the required data match between state child support agencies and financial institutions doing business in multiple states. State child support enforcement agencies use the data match outcomes to fulfill a statutory requirement to seize an obligor's assets to satisfy overdue child support payments.

OCSE also operates FAST Levy, which is an automated application within the FPLS to exchange electronic lien/levy information securely and efficiently. State child support enforcement agencies and multistate financial institutions (MSFIs) use FAST Levy to seize financial assets more quickly and efficiently.

Respondents: MSFIs and state child support agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average annual burden hours per response	Annual burden hours
Financial Data Match Record Specifications: Match File Upload/Download: Portal Users	184	4	.083	61.1
Election Form	15	1	.5	7.5
FAST Levy Response Withhold Record Specifications: Financial Institutions	1	1	1,716	1,716.0
FAST Levy Request Withhold Record Specifications: State Child Support Agencies	1	1	1,610	1,610.0

Estimated Total Annual Burden Hours: 3,394.6.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 652(l), 42 U.S.C. 666(a)(2) and (c)(1)(G)(ii), 42 U.S.C. 666(a)(17)(A), 42 U.S.C. 652(a)(7), and 45 CFR 303.7(a)(5).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–16891 Filed 8–3–20; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1680]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Isotonitazene; MDMB-4en-PINACA; CUMYL-PEGACLONE; Flubromazolam; Clonazolam; Diclazepam; 3-MeO-PCP; DIPHENIDINE; 2-MEO-DIPHENIDINE; 5-MEO-DALT; and 3-FLUOROPHENMETRAZINE (3-FPM); Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting interested persons to submit comments concerning abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling

changes on availability for medical use of 11 drug substances. These comments will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drug substances. This notice requesting comments is required by the Controlled Substances Act (CSA).

DATES: Submit either electronic or written comments by August 28, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 28, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 28, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1680 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Isotonitazene; MDMB-4en-PINACA; CUMYL-PEGACLONE; Flubromazolam; Clonazolam; Diclazepam; 3-MeO-PCP; DIPHENIDINE; 2-MEO-DIPHENIDINE; 5-MEO-DALT; and 3-FLUOROPHENMETRAZINE (3-FPM); Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (Psychotropic Convention). Article 2 of the Psychotropic Convention provides that if a party to the convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations (the U.N. Secretary-General) and provide the U.N. Secretary-General with information in support of its opinion.

Paragraph (d)(2)(A) of the CSA (21 U.S.C. 811) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Psychotropic Convention that it has information that may justify adding a drug or other substances to one of the schedules of the Psychotropic Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments that will be considered by HHS in its preparation of the scientific and medical evaluations of the drug or substance.

II. WHO Notification

The Secretary of HHS received the following notice from WHO (non-relevant text removed):
Ref.: C.L.22.2020

The World Health Organization (WHO) presents its compliments to Member States and Associate Members and in reference to C.L.14.2019 has the pleasure of informing

that the 43rd Expert Committee on Drug Dependence (ECDD) will meet from 12 to 16 October 2020 in Geneva, Switzerland. In the event that the meeting should be held virtually due to exceptional circumstances, corresponding arrangements will be made. Given that ECDD meetings are of a closed nature, this letter serves to notify Member States of the substances under review at the 43rd ECDD, which are in the Annex I for reference.

WHO is mandated by the 1961 and 1971 International Drug Control Conventions to make recommendations to the UN Secretary-General on the need for and level of international control of psychoactive substances based on the advice of its independent scientific advisory body, the ECDD. To assess the appropriate control of a psychoactive substance, the ECDD convenes annually to review the potential of this substance to cause dependence, abuse and harm to health, as well as any therapeutic applications. In order to perform this review and make scientific and evidence-based decisions, the ECDD conducts medical, scientific, and public health evaluations of the selected psychoactive substances using the best available information.

Although the meetings are of a closed nature, Member States are invited to contribute to the ECDD review process by joining the 43rd ECDD Open Session on 12 October 2020. The Open Session will allow interested parties to present information concerning substances under review to the Expert Committee. Registration information will be made available on the ECDD website: *https://www.who.int/medicines/access/controlled-substances/en/.*

As in the past and in line with the publication ''*Guidance on the WHO review of psychoactive substances for international control*'' (EB126/2010/REC1, Annex 6),[1] Member States can also contribute to the ECDD review process by providing accurate information concerning the substances under review in advance of the meeting. For this purpose, a questionnaire will be sent to Member States to gather country information on the legitimate use, harmful use, status of national control and potential impact of international control for each substance under evaluation.

In addition to the questionnaire, Member States are also encouraged to provide any additional relevant information (unpublished or published) on substances to be reviewed by the 43rd ECDD by emailing *ecddsecretariat@who.int* with the subject ''Ref: C.L.22.2020''.

The World Health Organization takes this opportunity to renew to Member States and Associate Members the assurance of its highest consideration.

GENEVA, 23 June 2020

[1] *https://apps.who.int/gb/ebwha/pdf_files/EB126-REC1/B126_REC1-en.pdf#page=58.*

Annex I

43nd Expert Committee on Drug Dependence (ECDD), 12–16 October 2020, Substances for Review

The substances listed below have never been formally reviewed by WHO and are not currently under international control. Information was brought to WHO's attention that these substances are clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any Party.

CRITICAL REVIEW

Synthetic Opioids	1. Isotonitazene
Synthetic Cannabinoid Receptor Agonists.	2. MDMB-4en-PINACA 3. CUMYL-PEGALONE
Benzodiazepines	4. Flubromazolam 5. Clonazolam 6. Diclazepam
Dissociative-type substances.	7. 3-MeO-PCP 8. DIPHENIDINE 9. 2-MEO-DIPHENIDINE
Hallucinogen	10. 5-MEO-SALT
Synthetic Stimulant	11. 3-FLUROPHENMETRAZINE (3-FPM)

FDA has verified the website addresses contained in the WHO notice, as of the date this document publishes in the **Federal Register,** but websites are subject to change over time. Access to view the WHO questionnaire can be found at *https://www.who.int/teams/health-product-and-policy-standards/controlled-substances/ecdd-member-state-questionnaire.*

III. Substances Under WHO Review

Isotonitazene (chemical name: *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine) is a potent synthetic opioid that is abused similar to other synthetic opioids. Its use has resulted in adverse health effects, including positively identified in 49 death investigation cases in the United States between August 2019 and April 2020. Law enforcement data indicate that isotonitazene has appeared in the United States' illicit drug market. According to the National Forensic Laboratory Information System (NFLIS) database, there have been 53 encounters of isotonitazene in the United States (as of June 2020). There are no commercial or approved medical uses for isotonitazene. On June 18, 2020, the Drug Enforcement Administration issued a notice of intent to temporarily control isotonitazene as a schedule I substance under the CSA.

MDMB-4en-PINACA is a synthetic cannabinoid that has been sold online and used to mimic the biological effects of tetrahydrocannabinol (THC), the main psychoactive constituent in marijuana. Research and clinical reports have demonstrated that synthetic cannabinoids are applied onto plant material so that the material may be smoked as users attempt to obtain a euphoric and psychoactive ''high''. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. According to the NFLIS database, MDMB-4en-PINACA was first encountered in the United States in January 2019. There have been 1,436 encounters of MDMB-4en-PINACA in the United States (as of July 6, 2020). MDMB-4en-PINACA has also been encountered mixed with opioids including heroin and fentanyl, with some incidents resulting in violent behaviors, tachycardia, and hypertension. There are no commercial or approved medical uses for MDMB-4en-PINACA and MDMB-4en-PINACA is not a controlled substance under the CSA.

CUMYL-PEGACLONE is a synthetic cannabinoid that has been sold online and used to mimic the biological effects of THC, the main psychoactive constituent in marijuana. Research and clinical reports have demonstrated that synthetic cannabinoids are applied onto plant material so that the material may be smoked as users attempt to obtain a euphoric and psychoactive ''high''. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. In vitro studies demonstrate that CUMYL-PEGALCONE binds to and activates the cannabinoid one receptor. CUMYL-PEGALCONE has not been encountered within the United States according to the NFLIS database (as of July 6, 2020). There are no commercial or approved medical uses for CUMYL-PEGALCONE and is not a controlled substance under the CSA.

Flubromazolam, clonazolam, and diclazepam belong to a class of substances known as benzodiazepines. Benzodiazepines produce central nervous system depression and are commonly used to treat insomnia, anxiety, and seizure disorders. Flubromazolam is a triazole analogue of the designer benzodiazepine, flubromazepam. Flubromazolam can be purchased on the internet and is used as a recreational substance in the United States. Flubromazolam has been identified in an increasing number of law enforcement seizures and has been associated with an increasing number of drug overdose deaths. It is abused by a broad range of groups including youths, young adults, and older adults. Clonazolam has been involved in an increasing number of drug seizure events as well as drug overdose deaths, alone and in combination with alcohol. Diclazepam is a designer benzodiazepine sold on the internet and

most often found as a liquid solution, but it may be sold as a powder, tablet, blotter paper, or pellet. In 2018, flubromazolam, clonazolam, and dicalazepam were all identified by law enforcement in driving under the influence of drugs cases in the United States. Flubromazolam, clonazolam, and diclazepam are not approved for medical use in the United States and are not controlled substances under the CSA.

3-MeO-PCP (3-methoxyphencyclidine; chemical name: 1-(1-(3-methoxyphenyl)cyclohexyl)piperidine) is a novel N-methyl-D-aspartate (NMDA) receptor antagonist with structural and biochemical similarities to phencyclcycidine (PCP) and other arylcyclohexylamines. 3-MeO-PCP is classified as an arylcyclohexylamine and produces dissociative anesthetic and hallucinogenic effects. Use of this substance is associated with intoxication and published case reports of both fatal and non-fatal overdose. 3-MeO-PCP is encountered by law enforcement in drug seizure reports. 3-MeO-PCP is an analogue of the Schedule II hallucinogen PCP. There is no approved medical use for 3-MeO-PCP in the United States. 3-MeO-PCP is not a controlled substance under the CSA. If intended for human consumption, 3-MeO-PCP may be treated as a ''controlled substance analogue'' under the CSA pursuant to 21 U.S.C 802(32) (A) and 813.

DIPHENIDINE (chemical name: 1-(1,2-diphenylethyl) piperidine) is a non-competitive NMDA receptor antagonist classified as a diarylethylamine and produces dissociative anesthetic and hallucinogenic effects. It was originally synthesized in the 1920s, but reports of abuse started in the last decade. Use of this substance is associated with intoxication and published case reports of both fatal and non-fatal overdose outside of the United States. DIPHENIDINE is encountered by law enforcement in drug seizure reports. DIPHENIDINE is not approved for medical use in the United States and is not a controlled substance under the CSA.

2-MeO-DIPHENIDINE (2-methoxy-diphenidine, methoxphenidine) is a non-competitive NMDA receptor antagonist classified as a diarylethylamine and produces dissociative anesthetic and hallucinogenic effects that may produce effects similar to high doses of dextromethorphan. Use of this substance is associated with intoxication and non-fatal overdose in published case reports outside the United States. 2-MeO-DIPHENIDINE is encountered by law enforcement in drug seizure reports. There is no approved medical use for 2-MeO-DIPHENIDINE in the United States and 2-MeO-DIPHENIDINE is not a controlled substance under the CSA.

5-MeO-DALT (chemical name: *N,N*-Diallyl-5-methoxytryptamine) is a tryptamine hallucinogen and is an agonist of the serotonin (5–HT) 5–HT_{2A} receptor. 5-MeO-DALT appears to produce hallucinogenic effects similar to other tryptamine hallucinogens and fully substituted for 2,5-dimethoxy-4-methylamphetamine (DOM) in DOM-trained rats. 5-MeO-DALT is an analogue of the Schedule I controlled substance 5methoxy-*N,N*-diisopropyltryptamine (5-MeO-DiPT). 5-MeO-DALT has been encountered by law enforcement in drug seizure reports. 5-MeO-DALT is not approved for medical use in the United States and is not controlled under the CSA.

3-FLUOROPHENMETRAZINE (3-FPM) (chemical name: 1-(3-fluorophenyl)-2-(methylamino)propan-1-one) shares substantial chemical structural similarity to phenmetrazine, a Schedule II controlled substance that was prescribed as an appetite suppressant before being withdrawn from the pharmaceutical drug market in the United States because of its abuse potential. 3-FPM, which is similar to phenmetrazine and other stimulant drugs of abuse, increases extracellular concentrations of the neurotransmitter dopamine by inhibiting the uptake of this neurotransmitter at the dopamine transporter. Elevated extracellular dopamine concentrations have been implicated in the mechanism of action of stimulant drugs of abuse. There is no approved medical use for 3-FPM in the United States and 3-FPM is not a controlled substance under the CSA.

IV. Opportunity To Submit Domestic Information

As required by paragraph (d)(2)(A) of the CSA, FDA, on behalf of HHS, invites interested persons to submit comments regarding the 11 drug substances. Any comments received will be considered by HHS when it prepares a scientific and medical evaluation for drug substances that is responsive to the WHO Questionnaire for these drug substances. HHS will forward such evaluation of these drug substances to WHO, for WHO's consideration in deciding whether to recommend international control/decontrol of any of these drug substances. Such control could limit, among other things, the manufacture and distribution (import/export) of these drug substances and could impose certain recordkeeping requirements on them.

Although FDA is, through this notice, requesting comments from interested persons, which will be considered by HHS when it prepares an evaluation of these drug substances, HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in late-2020. Any HHS position regarding international control of these drug substances will be preceded by another **Federal Register** notice soliciting public comments, as required by paragraph (d)(2)(B) of the CSA.

Dated: July 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–16905 Filed 8–3–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3560]

Biosimilar User Fee Rates for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for biosimilar user fees for fiscal year (FY) 2021. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Biosimilar User Fee Amendments of 2017 (BsUFA II), authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development; review of certain applications for approval of biosimilar biological products; and each biosimilar biological product approved in a biosimilar biological product application. BsUFA II directs FDA to establish, before the beginning of each fiscal year, the amount of initial and annual biosimilar biological product development (BPD) fees, the reactivation fee, and the biosimilar biological product application and program fees for such year. These fees apply to the period from October 1, 2020, through September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Bank, Office of Financial

Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 62019A, Beltsville, MD 20705–4304, 301–796–0292.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744G, 744H, and 744I of the FD&C Act (21 U.S.C. 379j–51, 379j–52, and 379j–53), as amended by BsUFA II (title IV of the FDA Reauthorization Act of 2017, Pub. L. 115–52), authorize the collection of fees for biosimilar biological products. Under section 744H(a)(1)(A) of the FD&C Act, the initial BPD fee for a product is due when the sponsor submits an investigational new drug (IND) application that FDA determines is intended to support a biosimilar biological product application or within 5 calendar days after FDA grants the first BPD meeting, whichever occurs first. A sponsor who has paid the initial BPD fee is considered to be participating in FDA's BPD program for that product.

Under section 744H(a)(1)(B) of the FD&C Act, once a sponsor has paid the initial BPD fee for a product, the annual BPD fee is assessed beginning with the next fiscal year. The annual BPD fee is assessed for the product each fiscal year until the sponsor submits a marketing application for the product that is accepted for filing or the sponsor discontinues participation in FDA's BPD program for the product.

Under section 744H(a)(1)(D) of the FD&C Act, if a sponsor has discontinued participation in FDA's BPD program and wants to re-engage with FDA on development of the product, the sponsor must pay a reactivation fee to resume participation in the program. The sponsor must pay the reactivation fee by the earlier of the following dates: No later than 5 calendar days after FDA grants the sponsor's request for a BPD meeting for that product or upon the date of submission by the sponsor of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application for that product. The sponsor will be assessed an annual BPD fee beginning with the first fiscal year after payment of the reactivation fee.

BsUFA II also authorizes fees for certain biosimilar biological product applications and for each biosimilar biological product identified in an approved biosimilar biological product application (section 744H(a)(2) and (3) of the FD&C Act). Under certain conditions, FDA will grant a small business a waiver from its first biosimilar biological product application fee (section 744H(d)(1) of the FD&C Act).

For FY 2018 through FY 2022, the base revenue amounts for the total revenues from all BsUFA fees are established by BsUFA II. For FY 2021, the base revenue amount is the FY 2020 inflation adjusted fee revenue amount of $41,922,873. The FY 2021 base revenue amount is to be adjusted for inflation and may be reduced, as appropriate, for long-term financial planning purposes. Beginning in FY 2021, the inflation-adjusted base revenue amount is also adjusted to reflect changes in the resource capacity needs for the process for the review of biosimilar biological product applications.

This document provides fee rates for FY 2021 for the initial and annual BPD fee ($102,494), for the reactivation fee ($204,988), for an application requiring clinical data ($1,746,745), for an application not requiring clinical data ($873,373), and for the program fee ($304,162). These fees are effective on October 1, 2020, and will remain in effect through September 30, 2021. For applications that are submitted on or after October 1, 2020, the new fee schedule must be used.

II. Fee Revenue Amount for FY 2021

The base revenue amount for FY 2021 is $41,922,873 prior to adjustments for inflation, resource capacity, and operating reserves (see section 744H(c)(1), (c)(2), and (c)(3) of the FD&C Act).

A. FY 2021 Statutory Fee Revenue Adjustments for Inflation

BsUFA II specifies that the $41,922,873 is to be adjusted for inflation increases for FY 2021 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 744H(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent (FTE) positions at FDA for the first 3 of the preceding 4 FYs, multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of biosimilar biological product applications for the first 3 of the preceding 4 FYs (see section 744H(c)(1)(B) of the FD&C Act).

Table 1 summarizes the actual cost and FTE data for the specified FYs and provides the percent changes from the previous FYs and the average percent changes over the first 3 of the 4 FYs preceding FY 2021. The 3-year average is 1.2644 percent.

TABLE 1—FDA PC&B EACH YEAR AND PERCENT CHANGES

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total FTE	17,022	17,023	17,144	
PC&B per FTE	$151,660	$158,061	$152,826	
Percent Change From Previous Year	2.8845%	4.2206%	−3.3120%	1.2644%

The statute specifies that this 1.2644 percent be multiplied by the proportion of PC&B costs to the total FDA costs of the process for the review of biosimilar biological product applications. Table 2 shows the PC&B and the total obligations for the process for the review of biosimilar biological product applications for the first 3 of the preceding 4 FYs.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR THE REVIEW OF BIOSIMILAR BIOLOGICAL PRODUCT APPLICATIONS

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$30,707,050	$35,477,032	$32,946,252	
Total Costs	$55,814,043	$62,604,122	$65,210,467	

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR THE REVIEW OF BIOSIMILAR BIOLOGICAL PRODUCT APPLICATIONS—Continued

Fiscal year	2017	2018	2019	3-Year average
PC&B Percent	55.0167%	56.6688%	50.5230%	54.0695%

The payroll adjustment is 1.2644 percent from Table 1 multiplied by 54.0695 percent (or 0.6837 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of biosimilar biological product applications for the first 3 years of the preceding 4 FYs (see section 744H(c)(1)(B) of the FD&C Act). As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). In order to continue applying a CPI which best reflects the geographic region in which FDA is headquartered and which provides the most current data available, the Washington-Arlington-Alexandria index will be used in calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Arlington-Alexandria area. The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 3—ANNUAL AND THREE-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

Year	2017	2018	2019	3-Year average
Annual CPI	256.221	261.445	264.777	
Annual Percent Change	1.1045%	2.0389%	1.2745%	1.4726%

The statute specifies that this 1.4726 percent be multiplied by the proportion of all costs other than PC&B to total costs of the process for the review of biosimilar biological product applications obligated. Since 54.0695 percent was obligated for PC&B (as shown in Table 2), 45.9305 percent is the portion of costs other than PC&B (100 percent minus 54.0695 percent equals 45.9305 percent). The non-payroll adjustment is 1.4726 percent times 45.9305 percent, 0.6764 percent.

Next, we add the payroll adjustment (0.6837 percent) to the non-payroll adjustment (0.6764 percent), for a total inflation adjustment of 1.3601 percent (rounded) for FY 2021.

We then multiply the base revenue amount for FY 2021 ($41,922,873) by one plus the inflation adjustment (1.013601), yielding an inflation-adjusted amount of $42,493,000 (rounded to the nearest thousand).

B. FY 2021 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies a process to establish and implement a capacity planning adjustment (CPA) to adjust the total revenue amount to reflect changes in the resource capacity needs for the process for the review of biosimilar biological product applications (see section 744H(c)(2) of the FD&C Act).

As a first step toward implementing the new methodology, FDA committed to establish modernized time reporting and a resource capacity planning capability. Modernized time reporting was implemented in CBER in 2018 and in CDER in 2019. A resource capacity planning capability was established in both CDER and CBER in 2020. In the statute, FDA was directed to commission an independent report evaluating options and recommendations for a methodology to accurately assess changes in the resource and capacity needs of the process for the review of biosimilar biological product applications, informed by personnel time reporting data as an input, and to publish the report for public comment. The evaluation was conducted by Booz Allen Hamilton and published on the FDA website in April 2020.[2] A docket was then opened to receive public comment.[3] After having reviewed the evaluation and the public comment, FDA is establishing and implementing the CPA methodology for the setting of FY 2021 fee amounts.

The new CPA methodology consists of four steps:

1. Forecast workload volumes: Predictive models estimate the volume of workload for the upcoming fiscal year. Workload categories for BsUFA include biosimilar biological product applications, participating BPD programs, supplements, and formal industry meetings scheduled (biosimilar initial advisory (BIA) and BPD Type 1–4 meetings,[4] including BIA and BPD Type 2 written-response only meetings)

2. Forecast the resource needs: Forecast algorithms are generated utilizing time reporting data. These algorithms estimate the required demand in FTEs for direct review-related efforts. This is then compared to current available resources for the direct review workload.

3. Assess the resource forecast in the context of additional internal factors: Program leadership examines operational, financial, and resourcing data to assess whether the FDA will be

[1] The Bureau of Labor Statistics' announcement of the geographical revision can be viewed at *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

[2] See: *https://www.fda.gov/media/136606/download.*

[3] See: *https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=FDA-2020-N-0989.*

[4] The BsUFA II commitment letter defines these meeting types in section 1.I.: *https://www.fda.gov/media/100573/download.*

able to utilize additional funds during the fiscal year and the funds are required to support additional review capacity. FTE amounts are adjusted, if needed.

4. Convert the FTE need to dollars: Utilizing the FDA's fully-loaded FTE cost model, the final feasible FTEs are converted to an equivalent dollar amount.

Further, FDA is adopting an iterative, continuous improvement approach as part of its CPA methodology. For FY 2021, FDA is applying the methodology to core review activities, for which significant data collection and analysis has been completed. Going forward, the Agency intends to refine its data and estimates for the core review activities to improve their accuracy, and also, as feasible, to apply the new methodology to all major activities that impact the resource needs of the process for the review of biosimilar biological product applications under BsUFA, potentially including, for example, post-market safety activities and some subsets of policy and guidance development. This iterative, continuous improvement approach to the CPA methodology was recommended by the independent evaluation and in the public comments. FDA believes that its estimates will be continuously improved over time as more robust data becomes available to more fully account for total BsUFA program resource needs.

The following section outlines the major components of the FY 2021 BsUFA CPA. Table 4 summarizes the forecasted workload volumes for BsUFA in FY 2021 based on predictive models, as well as historical actuals from FY 2019 for comparison.

TABLE 4—BSUFA ACTUAL FY 2019 WORKLOAD VOLUMES & PREDICTED FY 2021 WORKLOAD VOLUMES

Workload category	FY 2019 actuals	FY 2021 predictions
Efficacy Supplements	12	8
Labeling Supplements	10	7
Manufacturing Supplements	58	90
Biosimilar Biological Product Applications	6	8
BsUFA Industry Meetings (BIA, BPD Type 1–4)	114	102
Participating BPD Programs	95	119

Utilizing the resource forecast algorithms, the forecasted workload volumes for FY 2021 were then converted into estimated FTE needs for FDA's BsUFA direct review-related work. The resulting expected FY 2021 FTE need for BsUFA was compared to current onboard capacity for BsUFA direct review-related work to determine the FY 2021 resource delta, as summarized in Table 5.

TABLE 5—FY 2021 BSUFA RESOURCE DELTA

Current resource capacity	FY 2021 resource forecast	Predicted FY 2021 FTE delta
61.7	88.3	26.5

The projected 26.5 FTE delta was then assessed by FDA in the context of additional operational and internal factors to ensure that a fee adjustment is only made for resources which can be utilized in the fiscal year and for which funds are required to support additional review capacity. After accounting for the range of recent years' historical net FTE gains and one remaining previously funded BsUFA vacancy, FDA determined that the realistic expected net FTE gains could be funded through the expected FY 2021 collections amount without a further adjustment from the CPA. In summary, after accounting for these internal factors, FDA determined that in FY 2021 the BsUFA fee amounts did not need adjustment from the CPA to provide funds for the realistic estimated net FTE gains.

TABLE 6—FY 2021 BSUFA CPA

Additional FTEs for FY 2021	Cost for each additional FTE	FY 2021 BsUFA CPA
26.5	$301,701	$0

Although an adjustment to the fee amounts for resource needs by the CPA will not be made in FY 2021, FDA will evaluate the need for a fee adjustment from the CPA in future fiscal years and will make adjustments as warranted.

C. FY 2021 Statutory Fee Revenue Adjustments for Operating Reserve

BsUFA II provides for an operating reserve adjustment to allow FDA to adjust the fee revenue and fees for any given fiscal year during BsUFA II, after FY 2018, to maintain an appropriate operating reserve of carryover user fees. Beginning in FY 2019, FDA may reduce the fee revenue and fees for long-term financial planning purposes. Once the capacity planning adjustment is effective, FDA also may, if necessary, increase the fee revenue and fees to maintain not more than 21 weeks of operating reserve of carryover user fees.

As described in the BsUFA II commitment letter, *Biosimilar Biological Product Reauthorization Goals and Procedures Fiscal Years 2018 Through 2022,*[5] FDA is committed to reducing the BsUFA carryover reserve to an

[5] See: *https://www.fda.gov/media/100573/download.*

amount no greater than 21 weeks of operating reserve of carryover user fees by the end of FY 2022. FDA has determined that it shall not apply an operating reserve adjustment to lower the FY 2021 target revenue amount as FDA appears on track to reduce the carryover reserve to the committed level.

III. Fee Amounts for FY 2021

Under section 744H(b)(3)(A) of the FD&C Act, FDA must determine the percentage of the total revenue amount for a fiscal year to be derived from: (1) Initial and annual BPD fees and reactivation fees; (2) biosimilar biological product application fees; and (3) biosimilar biological product program fees. In establishing the fee amounts for the fourth year of BsUFA II, FDA considered how best to balance the fee allocation to provide stable funding and reasonable fee amounts. In future years, FDA will consider the most appropriate means of allocating the fee amounts to collect the adjusted target revenue amount, subject to the relevant statutory provisions.

A. Application Fees

In establishing the biosimilar biological product application fee amount for FY 2021, FDA utilized an average of the 3 most recently completed fiscal years (*i.e.,* fiscal years 2017–2019) of biosimilar biological product application submissions. Based on the available information, FDA estimates it will receive 8 biosimilar biological product applications requiring clinical data for approval in FY 2021.

FDA will maintain the biosimilar biological product application fee for FY 2021 at the same level as FY 2020, which is $1,746,745. This is estimated to provide a total of $13,973,960 representing 33 percent (rounded to the nearest whole number) of the FY 2021 target revenue amount.

B. Biosimilar Biological Product Program Fee

Under BsUFA II, FDA assesses biosimilar biological product program fees (''program fees''). An applicant in a biosimilar biological product application shall not be assessed more than five program fees for a fiscal year for biosimilar biological products identified in a single biosimilar biological product application (see FD&C Act section 744H(a)(3)(D)). Applicants are assessed a program fee for a fiscal year only for biosimilar biological products identified in a biosimilar biological product application approved as of October 1 of such fiscal year.

Based on available information, FDA estimates that 54 program fees will be invoiced for FY 2021, including currently approved products and products with the potential to be approved in pending applications with goal dates in FY 2020. For products invoiced in the FY 2021 regular billing cycle, FDA anticipates that zero program fees will be refunded.

FDA will maintain the biosimilar biological product program fee for FY 2021 at the same level as FY 2020, which is $304,162. This is estimated to provide a total of $16,424,748, representing 39 percent (rounded to the nearest whole number) of the FY 2021 target revenue amount.

C. Initial and Annual BPD Fees, Reactivation Fees

To estimate the number of BPD fees to be paid in FY 2021, FDA must consider the number of new BPD programs, the number of current BPD programs, and the number of BPD programs that will be reactivated. These estimates provide information that, when aggregated, allows FDA to set BPD fees (initial BPD fees, annual BPD fees, reactivation fees).

FDA uses internal data and a survey of BPD sponsors to estimate the total number of BPD programs for FY 2021. In FY 2021, FDA estimates 32 new BPD programs, no reactivations (a single reactivation is weighted as two BPD fees), and 86 BPD programs to be invoiced for the annual BPD fee, for a total equivalent of 118 BPD fees assessed in FY 2021.

The remainder of the target revenue of $12,094,292, or 28 percent (rounded to the nearest whole number), is to be collected from the BPD fees. Dividing this amount by the estimated 118 BPD fees to be paid equals an initial BPD and annual BPD fee amount of $102,494. The reactivation fee is set at twice the initial/annual BPD amount at $204,988. This represents a reduction of the BPD fees from the FY 2020 levels.

IV. Fee Schedule for FY 2021

The fee rates for FY 2021 are displayed in Table 7.

TABLE 7—FEE SCHEDULE FOR FY 2021

Fee category	Fee rates for FY 2021
Initial BPD	$102,494
Annual BPD	102,494
Reactivation	204,988
Applications:	
Requiring clinical data	1,746,745
Not requiring clinical data	873,373
Program	304,162

V. Fee Payment Options and Procedures

A. Initial BPD, Reactivation, and Application Fees

The fees established in the new fee schedule apply to FY 2021, *i.e.,* the period from October 1, 2020, through September 30, 2021. The initial BPD fee for a product is due when the sponsor submits an IND that FDA determines is intended to support a biosimilar biological product application for the product or within five calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. Sponsors who have discontinued participation in the BPD program for a product and seek to resume participation in such program must pay the reactivation fee by the earlier of the following dates: No later than five calendar days after FDA grants the sponsor's request for a BPD meeting for that product or upon the date of submission by the sponsor of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application for that product.

The application fee for a biosimilar biological product is due upon submission of the application (see section 744H(a)(2)(C) of the FD&C Act).

To make a payment of the initial BPD, reactivation, or application fee, complete the Biosimilar User Fee Cover Sheet, available on FDA's website (*https://www.fda.gov/bsufa*) and generate a user fee identification (ID) number. Payment must be made in U.S. currency by electronic check, check, bank draft, U.S. postal money order, or wire transfer. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov*, a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after the user fee ID number is generated. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (*Note:* Only full payments are accepted. No partial payments can be made online). Once

you search for your invoice, click ''Pay Now'' to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.) Please make sure that the FDA post office box number (P.O. Box 979108) and ID number is written on the check, bank draft, or postal money order.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied. The originating financial institution may charge a wire transfer fee. Include applicable wire transfer fees with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The following account information should be used to send payments by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. FDA's tax identification number is 53–0196965.

B. Annual BPD and Program Fees

FDA will issue invoices with payment instructions for FY 2021 annual BPD and program fees under the new fee schedule in August 2020. Payment will be due on October 1, 2020. If sponsors join the BPD program after the annual BPD invoices have been issued in August 2020, FDA will issue invoices in December 2020 to firms subject to fees for FY 2021 that qualify for the annual BPD fee after the August 2020 billing. FDA will issue invoices in December 2020 for any annual program fees for FY 2021 that qualify for fee assessments and were not issued in August 2020.

Dated: July 29, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16858 Filed 7–30–20; 4:15 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1693]

Outsourcing Facility Fee Rates for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2021 rates for the establishment and re-inspection fees related to entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities, as well as a re-inspection fee for each re-inspection of an outsourcing facility. This document establishes the FY 2021 rates for the small business establishment fee ($5,695), the non-small business establishment fee ($18,837), and the re-inspection fee ($17,085) for outsourcing facilities; provides information on how the fees for FY 2021 were determined; and describes the payment procedures outsourcing facilities should follow. These fee rates are effective October 1, 2020, and will remain in effect through September 30, 2021.

FOR FURTHER INFORMATION CONTACT:

For more information on human drug compounding and outsourcing facility fees: Visit FDA's website at: *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm.*

For questions relating to this notice: Lola Olajide, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61077B, Beltsville, MD 20705–4304, 240–402–4244.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Quality and Security Act contains important provisions relating to the oversight of compounding human drugs. Title I of this law, the Compounding Quality Act, created a new section 503B in the FD&C Act (21 U.S.C. 353b). Under section 503B of the FD&C Act, a human drug compounder can become an ''outsourcing facility.''

Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that meet all of the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If the conditions of section 503B are met, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) concerning the labeling of drugs with adequate directions for use; (2) section 505 (21 U.S.C. 355) concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs); and (3) section 582 (21 U.S.C. 360eee–1) concerning drug supply chain security requirements. Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) concerning current good manufacturing practice requirements for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j–62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities: (1) An annual establishment fee from each outsourcing facility and (2) a re-inspection fee from each outsourcing facility subject to a re-inspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The guidance provides additional information on the annual fees for outsourcing facilities and adjustments required by law, re-inspection fees, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's website at: *https://www.fda.gov/media/136683/download.*

II. Fees for FY 2021

A. Methodology for Calculating FY 2021 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: One based on FDA's payroll costs and one based on FDA's non-payroll costs for the first 3 of the 4 previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first 3 of the 4 previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2021. The 3-year average is 1.2644 percent.

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total FTE	17,022	17,023	17,144	
PC&B per FTE	$151,660	$158,061	$152,826	
Percent change from previous year	2.8845%	4.2206%	−3.3120%	1.2644%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 1.2644 percent should be multiplied by the proportion of PC&B to total costs of an average FDA FTE for the same 3 fiscal years.

TABLE 2—FDA PC&BS AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total Costs	$5,104,580,000	$5,370,935,000	$5,663,389,000	
PC&B Percent	50.5732%	50.0970%	46.2630%	48.9777%

The payroll adjustment is 1.2644 percent multiplied by 48.9777 percent, or 0.6193 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2021 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FDA FTE for the same period.

Table 2 provides the summary data for the percent change in the specified CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its website: *https://data.bls.gov/cgi-bin/surveymost?cu. The data can be viewed* by checking the box marked ''U.S. city average, All items—CUUR0000SA0'' and then selecting ''Retrieve Data.''

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

Year	2017	2018	2019	3-Year average
Annual CPI	245.120	251.107	255.657	
Annual Percent Change	2.1304%	2.4425%	1.8120%	2.1283%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 2.1283 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same 3 fiscal years. The proportion of all non-PC&B costs to total costs of an average FDA FTE for FYs 2017 to 2019 is 51.0223 percent (100 percent − 48.9777 percent = 51.0223 percent). Therefore, the non-pay adjustment is 2.1283 percent times 51.0233 percent, or 1.0859 percent.

The PC&B component (0.6193 percent) is added to the non-PC&B component (1.0859 percent), for a total inflation adjustment of 1.7052 percent (rounded). Section 744K(c)(2)(A)(i) of the FD&C Act specifies that one is added to that figure, making the inflation adjustment 1.017052.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2021 (1.7052 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2020 (11.9895 percent), as published in the **Federal Register** on July 31, 2019 (84 FR 37311 at 37312). The result of this multiplication of the inflation factors for the 6 years since FY 2015 (1.017052 × 1.119895) becomes the inflation adjustment for FY 2021. For FY 2021, the inflation adjustment is 13.8991 percent (rounded). We then add one, making the FY 2021 inflation adjustment factor 1.138991.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the

amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2021, FDA must estimate: (1) The number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2021 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.,* if each entity that registers as an outsourcing facility for FY 2021 were to pay the inflation-adjusted fee amount of $17,085).

With respect to (1), FDA estimates that 15 entities will qualify for small business exceptions and will pay the reduced fee for FY 2021. With respect to (2), to estimate the total number of entities that will register as outsourcing facilities for FY 2021, FDA used data submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 85 outsourcing facilities, including 15 small businesses, will be registered with FDA in FY 2021.

If the projected 85 outsourcing facilities paid the full inflation-adjusted fee of $17,085, this would result in total revenue of $1,452,225 in FY 2021 ($17,085 × 85). However, 15 of the entities that are expected to register as outsourcing facilities for FY 2021 are projected to qualify for the small business exception and to pay one-third of the full fee ($5,695 × 15), totaling $85,425 instead of paying the full fee ($17,085 × 15), which would total $256,275. This would leave a potential shortfall of $170,850 ($256,275 − $85,425).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. FDA has determined that it is appropriate to credit excess fees collected from the last completed fiscal year, due to the inability to conclusively determine the amount of excess fees from the fiscal year that is in progress at the time this calculation is made. This crediting is done by comparing the small business adjustment factor for the last completed fiscal year, FY 2019 ($2,248), to what would have been the small business adjustment factor for FY 2019 ($1,560) if FDA had estimated perfectly.

The calculation for what the small business adjustment would have been if FDA had estimated perfectly begins by determining the total target collections (15,000 × [inflation adjustment factor] × [number of registrants]). For the most recent complete fiscal year, FY 2019, this was $1,310,560 ($16,382 × 80). The actual FY 2019 revenue from the 80 total registrants (*i.e.,* 70 registrants paying FY 2019 non-small business establishment fee and 10 small business registrants) paying establishment fees is $1,201,350. $1,201,350 is calculated as follows: (FY 2019 Non-Small Business Establishment Fee adjusted for inflation only) × (total number of registrants in FY 2019 paying Non-Small Business Establishment Fee) + (FY 2019 Small Business Establishment Fee) × (total number of small business registrants in FY 2019 paying Small Business Establishment Fee). $16,382 × 70 + $5,461 × 10 = $1,201,350. This left a shortfall of $109,210 from the estimated total target collection amount ($1,310,560 − $1,201,350). $109,210 divided by the total number of registrants in FY 2019 paying Standard Establishment Fee (70) equals $1,560.

The difference between the small business adjustment factor used in FY 2019 and the small business adjustment factor that would have been used had FDA estimated perfectly is $688 ($2,248 − $1,560). The $688 (rounded to the nearest dollar) is then multiplied by the number of actual registrants who paid the standard fee for FY 2019 (70), which provides us a total excess collection of $48,181 in FY 2019.

Therefore, to calculate the small business adjustment factor for FY 2021, FDA subtracts $48,181 from the projected shortfall of $170,850 for FY 2021 to arrive at the numerator for the small business adjustment amount, which equals $122,669. This number divided by 70 (the number of expected non-small businesses for FY 2021) is the small business adjustment amount for FY 2021, which is $1,752 (rounded to the nearest dollar).

B. FY 2021 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Re-Inspection Fee

1. Establishment Fee for Qualified Small Businesses [1]

The amount of the establishment fee for a qualified small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by three (see section 744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2021 is 1.138991. See section II.A.1 for the methodology used to calculate the FY 2021 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2021 is one third of $17,085, which equals $5,695 (rounded to the nearest dollar).

2. Establishment Fee for Non-Small Businesses

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over- or under-collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2021 is 1.138991. The small business adjustment amount for FY 2021 is $1,752. See section II.A.2 for the methodology used to calculate the small business adjustment factor for FY 2021. Therefore, the establishment fee for a non-small business for FY 2021 is $15,000 multiplied by 1.138991 plus $1,752, which equals $18,837 (rounded to the nearest dollar).

3. Re-Inspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2021 re-inspection fee is equal to $15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2021 is 1.138991. Therefore, the re-inspection fee for FY 2021 is $15,000 multiplied by 1.138991, which equals $17,085 (rounded to the nearest dollar). There is

[1] To qualify for a small business reduction of the FY 2021 establishment fee, entities had to submit their exception requests by April 30, 2020. See section 744K(c)(4)(B) of the FD&C Act. The time for requesting a small business exception for FY 2021 has now passed. An entity that wishes to request a small business exception for FY 2022 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act,'' which can be accessed on FDA's website at *https://www.fda.gov/media/136683/download.*

no reduction in this fee for small businesses.

C. Summary of FY 2021 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	$5,695
Non-Small Business Establishment Fee	18,837
Re-inspection Fee	17,085

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the email address indicated in the registration file, or via regular mail if email is not an option. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2020 and wish to maintain their status as an outsourcing facility in FY 2021 must register during the annual registration period that lasts from October 1, 2020, to December 31, 2020. Failure to register and complete payment by December 31, 2020, will result in a loss of status as an outsourcing facility on January 1, 2021. Entities should submit their registration information no later than December 10, 2021, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Re-Inspection Fee

FDA will issue invoices for each re-inspection after the conclusion of the re-inspection, via email to the email address indicated in the registration file or via regular mail if email is not an option. Invoices must be paid within 30 days.

C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* Only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, click ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

2. If paying with a paper check: Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Include invoice number on check. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013).

3. When paying by wire transfer, the invoice number must be included. Without the invoice number the payment may not be applied. Regarding re-inspection fees, if the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that the outsourcing facility add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

Dated: July 29, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

July 7, 2020.

AGENCY: Office of the General Counsel, Office of the Secretary, HHS.

This document announces that the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Office of the General Counsel (OGC), is being amended to reflect a new component, changes in titles and order of succession, and changes in the law, and is being re-compiled so that the Statement of Organization incorporates all amendments, as may be amended herein, after the issuance of the last compiled Statement of Organization in 1973. *See* 38 FR 17,032 (June 28, 1973).

SUPPLEMENTARY INFORMATION: The Office of the Secretary (OS)'s Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Office of the General Counsel (OGC), should now read as follows:

Section I. Mission. The Mission of the Office of the General Counsel and the General Counsel, who is the special advisor to the Secretary on legal matters, is to provide all legal services and advice to the Secretary, Deputy Secretary, and all subordinate organizational components of the Department.

Section II. Organization. The Office of the General Counsel, under the supervision of a General Counsel, consists of:

1. The General Counsel and Immediate Office of the General Counsel
2. Divisions in the Office of the General Counsel
3. Ten Regional Offices

Subsection A. The Immediate Office of the General Counsel

1. The Immediate Office of the General Counsel. The Immediate Office of the General Counsel shall consist of the General Counsel, his or her executive assistant, a Principal Deputy General Counsel, such other Deputy General Counsel, both non-career and career, as the Secretary deems appropriate and appoints, Associate and Assistant Deputy General Counsel, Senior Counsel, and such other attorneys and assistants as the General Counsel deems appropriate, and the Office of Legal Resources (OLR).

a. The General Counsel. The General Counsel is the chief legal officer of the

Department and is directly responsible to the Secretary.

b. Principal Deputy General Counsel. The Principal Deputy General Counsel shall be the second-ranking legal officer of the Department and is directly responsible to the General Counsel and the Secretary. He or she may act in the stead of the General Counsel when the General Counsel is absent or unavailable.

c. Deputy General Counsel. The Deputy General Counsel report to the General Counsel and each shall be responsible for overseeing such substantive areas as designated by the General Counsel. In certain instances, a Deputy General Counsel may be appointed by the Secretary or assigned by the General Counsel to serve as the chief counsel of an operating division.

(1) Non-Career Deputy General Counsel. Non-career Deputy General Counsel report to the General Counsel and each shall be responsible for overseeing the substantive legal areas and corresponding OGC components designated by the General Counsel.

(2) Career Deputy General Counsel. There shall be two career Deputy General Counsel who report to the General Counsel. First, a Deputy General Counsel who shall oversee OLR, the General Law Division (GLD), the ten Regional Offices, and will be generally responsible for OGC management and operations subject to the direction of the General Counsel. Second, a Deputy General Counsel who shall oversee litigation and the National Complex Litigation and Investigations Division (NCLID).

d. Associate General Counsel. Associate General Counsel either head a Division within OGC or are located in the Immediate Office. In either event, Associate General Counsel report to the General Counsel or to such Deputy General Counsel as the General Counsel may designate.

e. Associate or Assistant Deputy General Counsel to the General Counsel. The General Counsel may designate one or more attorneys to act as his or her special assistant and to carry the title of Associate Deputy General Counsel or Assistant Deputy General Counsel, all of whom shall report directly to the General Counsel or to such Deputy General Counsel as the General Counsel may designate.

f. Senior Counsel or Senior Advisor to the General Counsel. Senior Counsel or Senior Advisor to the General Counsel perform such duties as may be assigned to them by the General Counsel, Deputy General Counsel or Associate General Counsel. At least one Senior Counsel or Senior Advisor should have a security clearance of the level and type deemed appropriate by the General Counsel.

g. Office of Legal Resources. The Office of Legal Resources within the Immediate Office of the General Counsel, headed by a director, is responsible for providing personnel, budget, correspondence, and information technology support to the Office of the General Counsel.

2. Relation of Immediate Office to the Divisions and Regions. Each division and each region is under the general supervision of the General Counsel and the assigned Deputy General Counsel, unless that Division is headed by a Deputy General Counsel. Each Divisional Associate General Counsel and Regional Chief Counsel reports directly to the assigned Deputy General Counsel on substantive legal matters, litigation strategy, and other matters as directed by the General Counsel.

3. Order of Succession.

a. General Counsel Vacancy. In the event of the General Counsel's absence, or in the event of a ''vacancy'' in the position of General Counsel as a result of death, resignation, or an inability to perform the functions and duties of the office, the Principal Deputy General Counsel shall act in the General Counsel's stead, or serve as the Acting General Counsel as dictated by the Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*

b. Principal Deputy General Counsel Vacancy. In the event of the absence of or vacancies in offices of both the General Counsel and the Principal Deputy General Counsel, the non-career Deputy General Counsel with the greatest seniority in that position shall perform the functions of or serve as the Acting General Counsel as dictated by the Vacancies Reform Act of 1998. In the event that the disabilities or vacancies extend to or include all non-career deputies, then the career Deputy General Counsel with the greatest seniority in that position shall act in or serve as the Acting General Counsel as dictated by the Vacancies Reform Act of 1998.

Subsection B. Divisions in the Office of the General Counsel

The Office of the General Counsel's nine divisions are as follows: General Law Division (GLD); the Children, Families and Aging Division (CFAD); the Ethics Division (ETHICSD); the Food and Drug Division (FDD); the Public Health Division (Ph.D.); the Legislative Division (LEGD); the Centers for Medicare & Medicaid Services Division (CMSD); the Civil Rights Division (CRD); and National Complex Litigation and Investigations Division (NCLID). Each Division shall be headed by either an Associate General Counsel or Deputy General Counsel, as determined by the General Counsel.

1. The General Law Division shall be headed by an Associate General Counsel who reports to the General Counsel through a career Deputy General Counsel. The Division consists of two branches, each headed by a Deputy Associate General Counsel reporting to the Associate General Counsel:

a. Claims and Employment Law Branch
b. Procurement, Fiscal and Information Law Branch

2. The Children, Families and Aging Division shall be headed by an Associate General Counsel who reports to the General Counsel through a designated Deputy General Counsel.

3. The Ethics Division shall be headed by an Associate General Counsel who reports to the General Counsel. The Division consists of two branches, each headed by a Deputy Associate General Counsel reporting to the Associate General Counsel:

a. Ethics Advice and Policy Branch
b. Ethics Program Administration Branch

The Associate General Counsel and Deputy Associate for Ethics Advice and Policy simultaneously serve by secretarial delegation as the Department's Designated Agency Ethics Official and Alternate Designated Agency Ethics Official, respectively.

4. The Food and Drug Division shall be headed by a Chief Counsel who shall be either a Deputy General Counsel or Associate General Counsel. In the event that the Chief Counsel is an Associate General Counsel, he or she shall report to the General Counsel through a designated Deputy General Counsel. The Division consists of two major branches, each of which is headed by a Deputy Associate General Counsel who reports to the Chief Counsel, as follows:

a. Litigation Branch
b. Program Review Branch, divided into the following three sub-branches:
(1) Foods & Veterinary Medicine
(2) Drugs and Biologics
(3) Tobacco & Devices

5. The Public Health Division shall be headed by an Associate General Counsel who reports to the General Counsel through a designated Deputy General Counsel. The Division is divided into four branches, each of which is headed by a Deputy Associate General Counsel reporting to the Associate General Counsel:

a. Indian Health Service Branch
b. Centers for Disease Control and Prevention Branch

c. National Institutes of Health Branch
d. Public Health and Science Branch

6. The Legislation Division shall be headed by an Associate General Counsel who reports to the General Counsel through a designated Deputy General Counsel.

7. The Centers for Medicare & Medicaid Services Division shall be headed by a Chief Legal Officer who shall be either a Deputy General Counsel or an Associate General Counsel. The Division consists of three major organizational groups, each of which is headed by a Deputy Associate General Counsel reporting to the Associate General Counsel or the Deputy General Counsel through an Associate General Counsel, as follows:

a. Litigation Group
b. Program Review Group
c. Program Integrity Group

8. The Civil Rights Division shall be headed by an Associate General Counsel who reports to the General Counsel through a designated Deputy General Counsel, and by a Deputy Associate General Counsel who reports to the Associate General Counsel.

9. The National Complex Litigation and Investigations Division (NCLID) has an Associate General Counsel who reports to General Counsel through a career Deputy General Counsel. In addition, NCLID has a Deputy Associate General Counsel for E-Discovery reporting to the Associate General Counsel.

Subsection C. Regional Offices

There are ten regional offices. Each regional office has a Chief Counsel who reports to the General Counsel through a designated career Deputy General Counsel. Regional offices may also have one or more Deputy Chief Counsel who report to the Chief Counsel. The regional offices are located in the following cities and provide legal services to the Department in the following states and territories:

1. Region I—Boston (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
2. Region II—New York City (New York, New Jersey, Puerto Rico, Virgin Islands)
3. Region III—Philadelphia (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia)
4. Region IV—Atlanta (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
5. Region V—Chicago (Illinois, Indiana, Ohio, Michigan, Minnesota, Wisconsin)
6. Region VI—Dallas (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
7. Region VII—Kansas City, MO (Iowa, Kansas, Missouri, Nebraska)
8. Region VIII—Denver (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
9. Region IX—San Francisco (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau)
10. Region X—Seattle (Alaska, Idaho, Oregon, Washington)

Section III. Functions

A. General Counsel and Immediate Office of the General Counsel

1. The General Counsel. The General Counsel is authorized to promulgate such directives and issue such legal opinions as may be necessary to carry out the responsibilities of the Office. The General Counsel directly (or through attorneys in the Office of the General Counsel), undertakes the following activities unless an applicable statute provides otherwise or the General Counsel has delegated the responsibility elsewhere:

a. Furnishes all legal services and advice to the Secretary, Deputy Secretary, and all offices, branches, or units of the Department in connection with the operations and administration of the Department and its programs, except with respect to functions expressly delegated by statute to the Inspector General.

b. Furnishes legal services and advice on such other matters as may be submitted by the Secretary, the Deputy Secretary, any other senior leaders, and other persons authorized by the Secretary to request such service or advice.

c. Represents the Department in all litigation when such direct representation is not precluded by law, and in other cases, making and supervising all contacts with attorneys responsible for the conduct of such litigation.

d. Acts as the Department's sole representative in communicating with the Department of Justice, including all United States Attorneys, on all civil matters and on all criminal matters, other than those criminal matters referred to the Department of Justice by the Inspector General.

e. Acts as the Department's sole representative in communicating with Office of White House Counsel or the Offices of General Counsel for any other Department or Agency.

f. Performs all liaison functions in connection with legal matters involving the Department, and formulating or reviewing requests for formal opinions or rulings by the Attorney General and the Comptroller General.

g. Issues pre-enforcement rulings or advisory opinions to the public on questions of law, except to the extent that that such authority has previously been delegated to the Inspector General under section 1128D of the Social Security Act.

h. Authorizes indemnification, as appropriate, pursuant to 45 CFR pt. 36.

i. Conducts internal investigations at the request of the Secretary or Deputy Secretary, or for matters that could lead to litigation.

j. Drafts all proposals for legislation originating in the Department and reviewing all proposed legislation submitted to the Department or to any operating agency of the Department for comment; preparing reports and letters to congressional committees, the Office of Management and Budget, and others on proposed legislation; and prescribing procedures to govern the routing and review, within the Department, of material relating to proposed Federal legislation.

k. Performs liaison functions with the Office of the Federal Register, National Archives and Records Service.

l. Reviews and approves all administrative complaints and enforcement actions by any agency within the Department before those complaints are filed or transmitted, or enforcement actions instituted to ensure that the complaint or enforcement action is legally sound.

m. Leads all negotiations on behalf of any agency within the Department.

n. Supervises all legal activities of the Department and its operating agencies.

o. Ensures that no one in the Department, other than those in OGC or expressly authorized by statute to do so, provides any legal advice to anyone in the Department or uses any title that implies that they are functioning as a departmental lawyer.

2. Principal Deputy General Counsel. The Principal Deputy General Counsel is the second ranking legal officer in the Department and performs the functions of the General Counsel in his or her absence or disability, including recusal, and, unless otherwise noted, oversees for the General Counsel all litigation involving the Department, its officers, inferior officers, and employees.

3. Deputy General Counsel. The Deputy General Counsel assist the General Counsel in carrying out his or her responsibilities and performs such duties as the General Counsel or

Principal Deputy General Counsel may assign. The Associate General Counsel for a Division shall report to the General Counsel through one or more Deputy General Counsel, as may be assigned by the General Counsel. Regional Chief Counsel shall report to the General Counsel through a career Deputy General Counsel.

B. Functions, Authorities and Responsibilities of the Divisions

The Divisions within OGC provide legal counsel to their clients, as described below, subject to the professional supervision and control of the General Counsel and assigned Deputy General Counsel.

1. *General Law Division.* The General Law Division, acting through its Associate General Counsel, performs the following:

a. Provides legal services on business management activities and administrative operations throughout the Department, including employment, compensation, personnel, appropriations, real and personal property (including National Environmental Policy Act), procurement, information, travel, and certain claims by and against the Department.

b. Represents the Department in all aspects of administrative litigation before the Merit Systems Protection Board (MSPB), Equal Employment Opportunity Commission (EEOC), and in labor arbitrations, as needed. Acts as agency counsel in support of the Department of Justice on employment cases filed in federal court.

c. Represents the Department in bid protests filed before the Comptroller General and contract disputes filed before the Civilian Board of Contract Appeals. Acts as agency counsel in support of the Department of Justice in bid protests and contract disputes filed before the U.S. Court of Federal Claims and appealed to the Federal Circuit.

d. Provides legal services to Department Freedom of Information Act (FOIA) Officers on the disclosure of agency records requested under FOIA, and communicates with the Department of Justice on the administration of the Freedom of Information Act.

e. Provides legal services to the Department on the Privacy Act of 1974, as amended, the Paperwork Reduction Act, the Federal Records Act, and the Government in the Sunshine Act.

f. Provides all legal services with respect to the formation, maintenance, and administration of the advisory committees under the Federal Advisory Committee Act.

g. Acts as the Department Claims Officer, responsible for adjudicating all administrative claims filed under the Federal Tort Claims Act, approval of claims filed under the Federal Medicare Recovery Claims Act in amounts of at least $20,000 but not exceeding $300,000, tort liability claims under the U.S. Constitution and other laws under which claims for money damages may be filed with the Department, as provided by 5 U.S.C. 5584, 10 U.S.C. 2774, except for claims arising under the Social Security Act. Also responsible for making final determinations on legally enforceable non tax debts owed to the United States government arising from HHS programs under the Federal Claims Collection Act, as amended, 31 U.S.C. 3711 *et seq.,* on the compromise of, and the suspension or termination of collection activities for, claims in amounts of $100,000 or less, exclusive of interest, and on the waiver of interest.

2. *Children, Families, and Aging Division.* The Children, Families, and Aging Division Provides legal services to the Administration for Children and Families and its various agencies including the Office of Refugee Resettlement and Administration for Community Living.

3. *Ethics Division.* The Ethics Division administers and oversees Department-wide implementation of comprehensive government ethics program requirements under the Ethics in Government Act of 1978, as amended, Executive Order 12731, and implementing regulations at 5 CFR part 2638. The Division, without limitation, performs the following:

a. Provides legal advice and policy guidance on interpretation and compliance issues involving the criminal conflict of interest statutes, 18 U.S.C. 210–219, political activity restrictions, anti-lobbying provisions, outside activity limitations, travel reimbursement guidelines, procurement integrity rules, financial disclosure obligations, and standards of ethical conduct matters including gifts between employees and from outside sources, conflicting financial interests and impartiality concerns, misuse of position and agency resources, and outside employment, fundraising, testimony, and teaching, speaking or writing, to Department officials, agency personnel, advisory committees and others.

b. Reviews executive branch public financial disclosure reports submitted by Presidential nominees/appointees subject to Senate confirmation, non-career SES and Schedule C political appointees, OGC career SES officials, and Op/Staff Division ethics officials (DECs) to assess potential violations of applicable laws or regulations, ensure transparency through accurate reporting, provide counseling on the avoidance of conflicts, and, if necessary, recommending appropriate corrective action, including drafting waivers, disqualification statements, ethics agreements, and certificate of divestiture materials; ensuring identical review and counseling responsibilities with respect to both the public and confidential financial disclosure forms filed by career employees are performed Department-wide by the DECs.

c. Plans, develops, and provides initial ethics orientation for new employees, annual ethics training for employees who file financial disclosure forms and others occupying certain sensitive positions, initial and annual ethics training for members of federal advisory committees, and specialized, topic-specific training on post-employment restrictions, political activity restrictions, insider trading, and procurement integrity rules.

d. Monitors component ethics programs and reviewing compliance with core ethics program elements, including advice, financial disclosure, outside activities, conflict of interest waivers, ethics agreements and travel payments from non-federal sources.

e. Communicates on matters related to government ethics with the Office of Counsel to the President, the Office of Government Ethics, the Office of Special Counsel, the Office of the Inspector General, Special Investigations Unit, the Office of Personnel Management, and the General Services Administration.

f. Develops component-specific conduct regulations and implementing procedures.

4. *Food and Drug Division.* The Food and Drug Division acts as the Commissioner's legal advisor and provides legal services to FDA. FDD, for example, performs the following:

a. Represents the FDA in connection with judicial and administrative proceedings involving programs administered by the FDA. Provides legal advice and policy guidance for programs administered by the FDA.

b. Acts as the Department and FDA's sole liaison to the Department of Justice and other Federal Departments for programs administered by FDA; all criminal prosecutions, investigations, and civil matters may only be referred to the Department of Justice through the Chief Counsel.

c. Drafts or reviews all proposed and final regulations and **Federal Register** notices prepared by FDA.

d. Performs legal research and gives legal opinions on regulatory issues, actions, and petitions submitted to FDA.

e. Reviews proposed legislation affecting FDA that originates in the Department or on which Congress requests the views of the Department.

f. Provides legal advice and assistance to the Office of the Secretary on matters within the expertise of the Chief Counsel.

5. *Public Health Division.* The Public Health Division provides legal services to all Public Health Service agencies (except to the Food and Drug Administration) and their programs, including the Office of the Surgeon General and the Commissioned Corps of the U.S. Public Health Service. Represented Public Health Service agencies include, but are not limited to the (i) the Office of the Assistant Secretary for Health, and its various programs, (ii) the Office of the Secretary's Office of Minority Health, (iii) the Centers for Disease Control and Prevention, (iv) the National Institutes of Health, (v) the Health Resources and Services Administration, (vi) the Indian Health Service, (vii) the Substance Abuse and Mental Health Services Administration, (viii) the Agency for Healthcare Research and Quality, and (ix) the Office of the Assistant Secretary for Preparedness and Response. In addition, the Public Health Service Division serves as the lead office within the Office of the General Counsel for grants-related and intellectual property issues, other than federal court or PTAB litigation.

6. *Legislation Division.* The Legislation Division performs the following:

a. Drafts all proposed legislation originating in the Department, reviewing specifications for such proposed legislation, and reviewing all proposed legislation submitted to the Department or to any constituent unit of the Department for comment.

b. Prepares or reviews reports and letters to Congressional Committees, the Office of Management and Budget, and others on proposed legislation.

c. Reviews proposed testimony of Department officials before Congressional Committees relating to pending or proposed legislation.

d. Acts as Department liaison with the Office of Management and Budget on legislative matters.

e. Prescribes procedures to govern the routing and review, within the Department, of material relating to proposed Federal legislation.

7. *Centers for Medicare & Medicaid Services Division.* The Centers for Medicare & Medicaid Services Division, acting through the Deputy General Counsel serving as the CMS Chief Legal Officer or an Associate General Counsel,

a. Acts as the CMS Administrator's legal advisor.

b. Represents CMS and the Office of the National Coordinator for Health Information Technology (''ONC'') in court proceedings and administrative hearings with respect to programs administered by CMS or ONC.

c. Provides legal advice and policy guidance for programs administered by CMS and ONC.

d. Acts as the Department's and CMS's and ONC's liaison to the Department of Justice and other Federal Departments for programs administered by those operating divisions.

e. Drafts or reviews all proposed and final regulations and **Federal Register** notices prepared by CMS, ONC, and other agencies.

f. Performs legal research and gives legal opinions on regulatory issues, actions, and petitions submitted to CMS and ONC.

g. Reviews proposed legislation affecting CMS, ONC, Office of Medicare Hearing Appeals (OMHA) and DAB that originates in the Department or on which Congress requests the views of the Department.

h. Provides legal advice and assistance to the Office of the Secretary on matters within the expertise of the CMS Chief Legal Officer.

i. Provides legal advice and assistance to the Office of the Secretary on matters relating to the COVID–19 Provider Relief Fund (PRF) and similar provider relief programs, including advice regarding the administration of the PRF, civil litigation relating to the PRF, and fraud and abuse involving PRF payments.

8. *Civil Rights Division.* The Civil Rights Division provides legal services for the Office for Civil Rights (OCR) and provides advice with respect to the civil rights laws to all agencies and offices within the Department. Among other things, CRD evaluates complaints, determines whether there is legal basis to proceed (which determination is binding on OCR), assists OCR in developing and implementing investigation plans, and clears the imposition of any civil money penalties. CRD likewise represents the Department in administrative proceedings and federal litigation, together with the Department of Justice. CRD provides these legal services with respect to:

a. Traditional civil rights laws such as, by way of example, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.* and 47 U.S.C. 225, 661), section 1557 of the Affordable Care Act (42 U.S.C. 18116).

b. Conscience statutes, such as the Church Amendments, the Weldon Amendment, and the Coats-Snowe Amendment.

c. The Health Insurance and Portability and Accountability Act of 1996 (Social Security Act § 1171 *et seq.*), the Health Information Technology for Economic and Clinical Health (HITECH) Act, and the rules implementing them.

9. *National Complex Litigation and Investigations Division.* The National Complex Litigation and Investigations Division provides legal services across the Department, as directed by the General Counsel or Principal Deputy General Counsel. In that regard, NCLID, performs the following:

a. Coordinates litigation spanning multiple OGC divisions, regional offices, or geographic areas.

b. Provides legal services in connection with complex litigation or anticipated complex litigation by or against the Department. Such litigation may include cases for which other OGC divisions or OGC regions request NCLID participation; cases spanning multiple OGC divisions or regional offices, or cases outside the scope of other OGC divisions or regional offices.

c. Conducts internal investigations at the request of the Secretary or Deputy Secretary, or on matters that could lead to litigation.

d. Administers the OGC-wide e-discovery program, and coordinates the use of e-discovery technology with other HHS staff and operating divisions.

e. Identifies and supports the implementation of best practices for litigation management, e-discovery, and virtual staffing across OGC.

C. Functions, Authorities and Responsibilities of the Regions

The Chief Counsel of each Region is HHS' legal representative in that Region. Regional offices within OGC provide a full range of legal services including, by way of example, legal counsel to their departmental clients and client agencies in the regions, as described below, subject to the professional supervision and direction of the General Counsel.

The Office of the General Counsel's ten regional offices provide legal advice, administrative and judicial litigation support and counseling services to the regional components of the Department. Regional attorneys provide general law

support to regional clients and handle work in most areas within HHS' jurisdiction with particular emphasis on litigation for, among others, CMS, ACF, OCR, CDC, and IHS. Regional offices also provide leadership with respect to bankruptcy cases. In the area of civil rights, they work in close consultation with the Associate General Counsel for the Civil Rights Division to ensure that the regional positions align closely with those of the Division thereby fostering national uniformity. In other areas, the Divisions and Regions work collaboratively to provide consistent, uniform legal advice.

Dated: July 16, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–16901 Filed 8–3–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Drug Repositioning and Combination Therapy for AD.

Date: September 4, 2020.

Time: 11:00 a.m. to 2:00 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: Alexander Parsadanian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9666, *parsadaniana@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging and Menopause.

Date: September 8, 2020.

Time: 10:00 a.m. to 1:30 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: Greg Bissonette, 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) 402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 30, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16971 Filed 8–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Senescence 1.

Date: August 25, 2020.

Time: 1:00 p.m. to 4:30 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: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging and stem cells.

Date: September 2, 2020.

Time: 11:30 a.m. to 2:00 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: Anita H. Undale, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827–7428, *anita.undale@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 30, 2020.

Miguelina Perez,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16969 Filed 8–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed 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 Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Review Subcommittee.

Date: October 21, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20817, (301) 443–8599, *espinozala@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs;

93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 29, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16904 Filed 8–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research (NIDCR); 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: NIDCR Special Grants Review Committee DSR NIDCR Special Grants Review Meeting.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 30, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16968 Filed 8–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Health Informatics.

Date: August 13, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chittari V Shivakumar, Ph.D., Scientific Review Officer, National Institutes of Health Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892 301–408–9098, *chittari.shivakumar@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 30, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16967 Filed 8–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–28]

30-Day Notice of Proposed Information Collection: Application for Resident Opportunity & Self Sufficiency (ROSS) Grant Forms, OMB Control Number 2577–0229

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* September 3, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/StartPrintedPage15501PRAMain.* 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: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 26, 2019.

A. Overview of Information Collection

Title of Information Collection: Application for the Resident Opportunities and Self Sufficiency (ROSS) Program.

OMB Approval Number: 2577–0229.

Type of Request: Revision of a previously approved collection.

Form Number: ROSS Grant Application forms: HUD 52752; HUD 52753; HUD–52755; HUD–57268. *Other HUD forms:* SF–424; HUD–2880; HUD–2991; HUD–2993; HUD–2994A; SF–LLL.

Description of the need for the information and proposed use: The forms are used to evaluate capacity and

eligibility of applicants to the ROSS program.

Respondents (*i.e.*, affected public): Public Housing Authorities, tribes/TDHEs, public housing resident associations, and nonprofit organizations.

Estimated Number of Respondents: 350.

Estimated Number of Responses: 350.

Frequency of Response: 1.

Average Hours per Response: 3.93 hours.

Total Estimated Burdens: 1,375.5 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other form of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–16865 Filed 8–3–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900 253G]

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to reflect current costs of administration, operation, maintenance, and rehabilitation.

DATES: The irrigation assessment rates are current as of January 1, 2020.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation project or facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to identify contacts at the regional or local office at which the project or facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on February 25, 2020 (85 FR 10715) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended April 27, 2020.

Did BIA defer or change any proposed rate increases?

Yes. The 2021 Operation and Maintenance (O&M) rate for San Carlos Irrigation Project—Indian Works of $104.00 per acre will not be implemented as originally proposed. A component of the San Carlos Irrigation Project—Indian Works rate is established by the San Carlos Irrigation Project Joint Control Board (comprised of representatives from the Gila River Indian Community and the San Carlos Irrigation and Drainage District), which is responsible for maintenance of the San Carlos Irrigation Project Joint Delivery Facilities. The Joint Control Board has changed its 2021 rate from $22.22 per acre to $16.00 per acre. The other two components of the San Carlos Irrigation Project—Indian Works rate (San Carlos Irrigation Project—Indian Works and San Carlos Irrigation Project—Joint Works) are established by BIA and will be implemented as proposed in the **Federal Register**. Because the Joint Control Board changed its rate component, this notice of rate adjustment reflects an equivalent change and a final 2021 O&M rate of $97.78 per acre for San Carlos Irrigation Project—Indian Works. All other rates are to be implemented at the respective irrigation projects as proposed.

Did BIA receive any comments on the proposed irrigation assessment rate adjustments?

No. BIA did not receive any comments on the proposed irrigation assessment rate adjustments.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the internet site for the Government Publishing Office at *www.gpo.gov.*

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior (Secretary) by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Whom can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project/agency contacts
Northwest Region Contacts	
Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4169, Telephone: (503) 231–6702.	
Flathead Indian Irrigation Project	Robert Compton, Acting Superintendent, Larry Nelson, Acting Irrigation Project Manager, P.O. Box 40, Pablo, MT 59855, Telephones: (406) 675–0207 Acting Superintendent, (406) 745–2661 Project Manager.
Fort Hall Irrigation Project	Tim Gardner, Acting Irrigation Project Manager, Building #2 Bannock Avenue, Fort Hall, ID 83203–0220, Telephone: (208) 238–1992.
Wapato Irrigation Project	Wyeth Wallace, Acting Superintendent, Pete Plant, Acting Project Administrator, 413 South Camas Avenue, Wapato, WA 98951–0220, Telephones: (509) 865–2421 Acting Superintendent, (509) 877–3155 Acting Project Administrator.
Rocky Mountain Region Contacts	
Susan Messerly, Acting Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Avenue North, Billings, MT 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Thedis Crowe, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544 Superintendent, (406) 338–7519 Irrigation Project Manager.
Crow Irrigation Project	Clifford Serawop, Superintendent, Jim Gappa, Acting Irrigation Project Manager, (Project O&M performed by Water Users Association), P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672 Superintendent, (406) 247–7998 Acting Irrigation Project Manager.
Fort Belknap Irrigation Project	Mark Azure, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project O&M contracted to Tribes under PL 93–638), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901 Superintendent, (406) 353–8454 Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Howard Beemer, Superintendent, Jim Gappa, Acting Irrigation Project Manager, (Project O&M performed by Fort Peck Water Users Association), P.O. Box 637, Poplar, MT 59255, Telephones: (406) 768–5312 Superintendent, (406) 653–1752 Huber Wright—Lead ISO.
Wind River Irrigation Project	Leslie Shakespeare, Superintendent, Jim Gappa, Acting Irrigation Project Manager, (Project O&M for Little Wind, Johnstown, and Lefthand Units contracted to Tribes under PL 93–638; Little Wind-Ray and Upper Wind Units O&M performed by Ray Canal, A Canal, and Crowheart Water Users Associations), P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810 Superintendent, (406) 247–7998 Acting Irrigation Project Manager.
Southwest Region Contacts	
Patricia L. Mattingly, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, NM 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Project Manager.
Western Region Contacts	
Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, AZ 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Davetta Ameelyenah, Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, (Project O&M compacted to Tribes), 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801, Telephone: (775) 738–5165, (208) 759–3100 (Tribal Office).
Yuma Project, Indian Unit	Denni Shields, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202.
San Carlos Irrigation Project (Indian Works and Joint Works).	Ferris Begay, Project Manager, Kyle Varvel, Acting Supervisory Civil Engineer, 13805 North Arizona Boulevard, Coolidge, AZ 85128, Telephone: (520) 723–6225.
Uintah Irrigation Project	Antonio Pingree, Superintendent, Ken Asay, Irrigation System Manager, (Project O&M performed by Uintah Indian Irrigation Project Operation and Maintenance Company), P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, (435) 722–4344.
Walker River Irrigation Project	Robert Eben, Superintendent, 311 East Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are adjusted by this notice?

The rate table below contains final rates for the 2020 and 2021 calendar years for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. An asterisk immediately following the rate category notes the irrigation projects where 2020 rates are different from the 2021 rates.

Project name	Rate category	Final 2020 rate	Final 2021 rate
Northwest Region Rate Table			
Flathead Irrigation Project	Basic per acre—A	$33.50	$33.50
	Basic per acre—B	16.75	16.75
	Minimum Charge per tract	75.00	75.00
Fort Hall Irrigation Project	Basic per acre	58.50	58.50
	Minimum Charge per tract	39.00	39.00
Fort Hall Irrigation Project—Minor Units	Basic per acre	38.00	38.00
	Minimum Charge per tract	39.00	39.00
Fort Hall Irrigation Project—Michaud Unit	Basic per acre	63.50	63.50
	Pressure per acre *	98.50	99.50
	Minimum Charge per tract	39.00	39.00
Wapato Irrigation Project—Toppenish/Simcoe Units	Minimum Charge per bill	25.00	25.00
	Basic per acre	25.00	25.00
Wapato Irrigation Project—Ahtanum Units	Minimum Charge per bill	30.00	30.00
	Basic per acre	30.00	30.00
Wapato Irrigation Project—Satus Unit	Minimum Charge per bill	79.00	79.00
	"A" Basic per acre	79.00	79.00
	"B" Basic per acre	85.00	85.00
Wapato Irrigation Project—Additional Works	Minimum Charge per bill	80.00	80.00
	Basic per acre	80.00	80.00
Wapato Irrigation Project—Water Rental	Minimum Charge per bill	86.00	86.00
	Basic per acre	86.00	86.00
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project	Basic per acre *	$20.00	$20.50
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).	Basic per acre *	28.00	28.50
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).	Basic per acre *	28.00	28.50
Crow Irrigation Project—Two Leggins Unit	Basic per acre	14.00	14.00
Crow Irrigation Two Leggins Drainage District	Basic per acre	2.00	2.00
Fort Belknap Irrigation Project	Basic per acre	17.00	17.00
Fort Peck Irrigation Project	Basic per acre	27.00	27.00
Wind River Irrigation Project—Units 2, 3 and 4	Basic per acre	25.00	25.00
Wind River Irrigation Project—Unit 6	Basic per acre	22.00	22.00
Wind River Irrigation Project—LeClair District (See Note #1)	Basic per acre	47.00	47.00
Wind River Irrigation Project—Crow Heart Unit	Basic per acre	16.50	16.50
Wind River Irrigation Project—A Canal Unit	Basic per acre	16.50	16.50
Wind River Irrigation Project—Riverton Valley Irrigation District (See Note #1).	Basic per acre	30.65	30.65
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract	50.00	50.00
	Basic per acre *	21.50	22.00
Western Region Rate Table			
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet *	59.00	61.50
	Excess Water per acre-foot over 5.75 acre-feet	18.00	18.00
Duck Valley Irrigation Project (See Note #2)	Basic per acre	5.30	5.30
Yuma Project, Indian Unit (See Note #3)	Basic per acre up to 5.0 acre-feet	154.50	(+)
	Excess Water per acre-foot over 5.0 acre-feet	30.00	(+)
	Basic per acre up to 5.0 acre-feet (Ranch 5)	154.50	(+)
San Carlos Irrigation Project (Joint Works) (See Note #4)	Basic per acre *	20.00	25.78

	Final 2020 and 2021 Construction Water Rate Schedule:			
		Off project construction	On project construction—gravity water	On project construction—pump water
	Administrative Fee	$300.00	$300.00	$300.00.
	Usage Fee	$250.00 per month	No Fee	$100.00 per acre foot.
	Excess Water Rate †	$5.00 per 1,000 gal	No Charge	No Charge.

Project name	Rate category	Final 2020 rate	Final 2021 rate
San Carlos Irrigation Project (Indian Works) (See Note #5)	Basic per acre *	$86.00	$97.78
Uintah Irrigation Project	Basic per acre	23.00	23.00
	Minimum Bill	25.00	25.00
Walker River Irrigation Project	Basic per acre	31.00	31.00

* Notes irrigation projects where rates are adjusted.
+ The Bureau of Reclamation (BOR) rate component has not been established. See Note #3.
† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.
Note #1 O&M rates for LeClair and Riverton Valley Irrigation Districts apply to Trust lands that are serviced by each irrigation district. The annual O&M rates are based on budgets submitted by LeClair and Riverton Valley Irrigation Districts, respectively.
Note #2 The annual O&M rate is established by the Shoshone-Paiute Tribes who perform O&M under a self-governance compact.

Note #3 The O&M rate for the Yuma Project, Indian Unit has two components. The first component of the O&M rate is established by the Bureau of Reclamation (BOR), the owner and operator of the Project. BOR's rate, which is based upon the annual budget submitted by BOR, is $151.00 for 2020 but has not been established for 2021. The second component of the O&M rate is established by BIA to cover administrative costs, which includes billing and collections for the Project. The final 2020 and 2021 BIA rate component is $3.50/acre.

Note #4 The Construction Water Rate Schedule identifies fees assessed for use of irrigation water for non-irrigation purposes.

Note #5 The O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is established by the BIA San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; the final 2021 Indian Works rate component is $56.00 per acre. The second component is established by the BIA San Carlos Irrigation Project—Joint Works; the final 2021 Joint Works rate component is $25.78 per acre. The third component is established by the San Carlos Irrigation Project Joint Control Board and is $16.00 per acre for 2021.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments are not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or on the private sector, of more than $130 million per year. They do not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

These rate adjustments do not effect a taking of private property or otherwise have ''takings'' implications under Executive Order 12630. The rate adjustments do not deprive the public, State, or local governments of rights or property.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, these rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires January 31, 2023.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(d)), pursuant to 43 CFR 46.210(i). In addition, the rate adjustments do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–16881 Filed 8–3–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL060–L16100000–DR0000]

Notice of Availability of the Record of Decision and Approved Resource Management Plan for the Missoula Field Office, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Department of the Interior, Montana/Dakotas Bureau of Land Management (BLM) has prepared a Record of Decision and Approved Resource Management Plan (RMP) with an associated Final Environmental Impact Statement (EIS) for BLM public lands and resources managed by the Missoula Field Office, Montana. By this notice, the BLM is announcing the availability of the Record of Decision and Approved RMP.

ADDRESSES: Copies of the Record of Decision and Approved RMP are available at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804, or may be viewed online at: *https://eplanning.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Maggie Ward, RMP Project Manager, Missoula Field Office, at telephone: (406) 329–3914, and at the mailing address and website listed earlier. 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. Ward during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Missoula Approved RMP replaces the 1986 Garnet RMP. The Missoula Approved RMP provides a single, comprehensive land use plan that guides management on approximately 163,000 acres of BLM-managed public lands and 267,000 acres of Federal mineral estate in western Montana in Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders counties. Over 99 percent of the BLM-managed public lands are in Granite, Missoula, and Powell counties.

The BLM developed the Missoula RMP in collaboration with three cooperating agencies. The alternative selected as the Approved RMP is Alternative B with components of sub-Alternative C, as described in the Proposed RMP. It provides for a balanced combination of goals, objectives, allowable uses and management actions.

The Notice of Availability for the Missoula Proposed RMP was published in the **Federal Register** on February 14, 2020, which initiated a 30-day protest period and a 60-day Governor's consistency review period (85 FR 8607). The BLM received 72 timely protest submissions. All protests have been resolved and/or dismissed. For a full description of the issues raised during the protest period and how they were addressed, please refer to the Director's Protest Resolution Report, which is available at the website in the **ADDRESSES** section earlier.

The Montana Governor submitted a letter identifying certain concerns related to the consistency of the Proposed RMP with State plans. After a thorough review, the BLM determined that the Approved RMP is consistent with existing State plans.

The Approved RMP identifies comprehensive long-range decisions for the management and use of resources on BLM-administered public lands, focusing on the principles of multiple use and sustained yield set forth in FLPMA.

Authority: 40 CFR 1506.6 and 43 CFR 1610.2

John Mehlhoff,

State Director, Montana/Dakotas BLM.

[FR Doc. 2020–16926 Filed 8–3–20; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL060–L16100000–DR0000]

Notice of Availability of the Record of Decision and Approved Resource Management Plan for the Lewistown Field Office, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Department of the Interior, Montana/Dakotas Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) and Approved Resource Management Plan (RMP) with an associated Final Environmental Impact Statement for BLM public lands and resources managed by the Lewistown Field Office, and a portion of the Butte Field Office in northern Lewis and Clark County, Montana. By this notice, the BLM is announcing the availability of the ROD and Approved RMP.

ADDRESSES: Copies of the ROD and Approved RMP are available at the Lewistown Field Office, 920 NE Main Street, Lewistown, MT 59457, or may be viewed online at: *https://eplanning.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dan Brunkhorst, RMP Project Manager, Lewistown Field Office, at telephone: (406) 538–1981, and at the mailing address and website listed earlier. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Brunkhorst during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Lewistown Approved RMP replaces both the 1994 Judith RMP and the 1984 Headwaters RMP. The Lewistown Approved RMP provides a single, comprehensive land use plan that guides management on approximately 651,200 acres of BLM-managed public lands and 1,196,800 acres of Federal mineral estate in central Montana in Cascade, Fergus, Judith Basin, Meagher, Petroleum, Pondera, Teton, Chouteau, and Lewis and Clark counties. These lands and minerals are managed by two BLM offices located in Lewistown and Butte, Montana. The BLM developed the Lewistown RMP in collaboration with nine cooperating agencies.

The alternative selected as the Approved RMP is a slightly modified version of Alternative C2, as described in the Proposed RMP. It provides for a balanced combination of goals, objectives, allowable uses, and management actions. The Notice of Availability for the Lewistown Proposed RMP was published in the **Federal Register** on February 14, 2020, which initiated a 30-day protest period and a 60-day Governor's consistency review period (85 FR 8607). The BLM received 150 timely protest submissions. All protests have been resolved and/or dismissed by the BLM Director. For a full description of the issues raised during the protest period and how they were addressed, please refer to the Director's Protest Resolution Report, which is available at the website listed earlier (see **ADDRESSES**).

The Montana Governor submitted a letter identifying certain concerns related to the consistency of the Proposed RMP with State plans. After a thorough review, the BLM determined that the Approved RMP is consistent with existing State plans; however, as a result of the Governor's consistency review comments, the BLM clarified in the glossary that administrative use applies to State access needs, and provided additional wording in the Judith Mountains Special Recreation Management Area for the protection of westslope cutthroat trout habitat.

The Approved RMP identifies comprehensive long-range decisions for the management and use of resources on BLM-administered public lands, focusing on the principles of multiple use and sustained yield set forth in FLPMA.

Authority: 40 CFR 1506.6 and 43 CFR 1610.2.

John Mehlhoff,

State Director, Montana/Dakotas BLM.

[FR Doc. 2020–16925 Filed 8–3–20; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–GAAR]

Availability of Record of Decision Selecting a Route for the Ambler Mining District Industrial Access Road Through the Kobuk National Preserve, Alaska; Terms and Conditions Accompanying That Decision, and Final Environmental and Economic Analysis of the Impacts of Proposed Routes Within the Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: As required by law, the Department of the Interior (DOI) and the Department of Transportation (DOT) have jointly agreed upon a route for the issuance of the right-of-way across the Western (Kobuk River) unit of the Gates of the Arctic National Preserve for the proposed Ambler Mining District Industrial Access Road, based on the Final Environmental and Economic Analysis.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act (ANILCA) established the Gates of the Arctic National Preserve (Preserve). Section 201(4) of that Act also required that the Secretary of the Interior permit access for surface transportation from the Dalton Highway to the Ambler Mining District through the Preserve, and for the Secretaries of the Interior and Transportation to jointly agree upon the route. The Act further required the two Secretaries to prepare an Environmental and Economic Analysis (EEA) for the purpose of determining the most desirable route for the right-of-way through the Preserve, in lieu of an Environmental Impact Statement, and exempted the EEA from judicial review. The EEA and related activities were to be triggered by the filing of an application for such a right-of-way.

The Alaska Industrial Development and Export Authority (AIDEA), a public corporation of the State of Alaska, has applied for a right-of-way for an industrial access road through the Preserve. The proposed route is 26 miles within the Preserve and 211 miles in total (the Northern Alignment). The EEA also analyzed an alternative route that is 18 miles within the Preserve and 228 miles in total (the Southern Alignment).

The National Park Service (NPS), in cooperation with the U.S. Department of Transportation, Federal Highway Administration (FHWA), prepared the EEA. A draft of the document was issued for public comment on August 23, 2019, for a comment period that originally extended through October 7, 2019. Based on feedback from the public, this was extended until October 29, 2019. NPS also attended 12 public meetings sponsored by BLM, one in Fairbanks, one in Washington, DC, and 10 in rural Alaska communities possibly impacted by the road.

NPS received slightly under 3,000 comments. The NPS analyzed all pieces of correspondence received during the comment period when preparing the final EEA. The comments assisted in identifying sections of the draft EEA, including proposed terms and conditions, that required refinement and revision. It also aided in organizing, clarifying, and addressing technical information within the final EEA.

The Record of Decision (ROD), informed by the EEA, determined the Northern Alignment to be the most economically feasible and prudent alternative with less severe impacts allowing for construction, operation, maintenance, and reclamation of the private industrial access road. The selected route would impact fewer wetlands, would have less adverse impacts on fish, subsistence, wild and scenic rivers and would have greater economic feasibility.

Due to the need for the overall road to traverse land managed by the Bureau of Land Management (BLM) and the need for other federal permits, including a Clean Water Act section 404 permit from the Army Corps of Engineers (USACE), the full project is subject to NEPA, with BLM and USACE jointly undertaking that analysis. The subsistence impact analysis required by ANILCA Section 810 is found in the BLM/USACE joint ROD (JROD), as are the results of consultations required under other applicable laws. The JROD determined that the Northern Alignment was the least environmentally damaging practicable alternative and would not be contrary to the public interest. Full details are in the final DOI/DOT ROD and EEA, including required permit terms and conditions, which are available at *https://parkplanning.nps.gov/Ambler.*

This is a final decision.

Authority: 16 U.S.C. 410hh(4); 43 CFR 36.13(a).

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–16906 Filed 8–3–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63644000 DRT000000.CH7000 201D1113RT]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas That Are Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: In accordance with the regulations governing valuation of gas produced from Indian leases, the Office of Natural Resources Revenue (ONRR) is publishing this notice in the **Federal Register** to notify industry of ONRR's determination of the major portion prices applicable to calendar year 2018 and the date by which a lessee must pay any additional royalties due under major portion pricing.

DATES: The due date to pay additional royalties based on the major portion prices is October 5, 2020.

FOR FURTHER INFORMATION CONTACT: *Calculation of Prices Information:* Robert Sudar, Manager, Market & Spatial Analytics, ONRR, at (303) 231–3511, or email to *Robert.Sudar@onrr.gov;* mailing address—Office of Natural Resources Revenue, P.O. Box 25165, MS 64310B, Denver, Colorado 80225–0165.

Reporting Information: Lee-Ann Martin, Program Manager, Reference & Reporting Management, ONRR, at (303) 231–3313, or email to *Leeann.Martin@onrr.gov;* mailing address—Office of Natural Resources Revenue, P.O. Box 25165, MS 63300B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS), published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' which became effective January 1, 2000, 64 FR 43506, (Aug. 10, 1999). Those gas valuation regulations apply to all Indian (Tribal or allotted) oil and gas leases except for leases on the Osage Indian Reservation. Secretarial Order 3299, as amended on August 29, 2011, created ONRR and delegated to it the ''royalty and revenue management function of the Minerals Management Service.''

The regulations require ONRR to publish major portion prices for each designated area that is not associated with an index zone for each production month, as well as the due date to submit any additional royalty payments. 30

CFR 1206.174(a)(4)(ii). If you owe additional royalties based on a published major portion price, you must submit to ONRR, by the due date, an amended form ONRR–2014, Report of Sales and Royalty Remittance. If you fail to pay the additional royalties by the due date, late payment interest will begin to accrue as set forth under 30 CFR 1218.54. Late payment interest will accrue from the due date established by this Notice until ONRR receives your payment. The table below lists major portion prices for all designated areas that are not associated with an index zone. The due date is the end of the month, following 60 days after the publication date of this notice in the **Federal Register**.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan. 2018	Feb. 2018	Mar. 2018	Apr. 2018
Fort Belknap Reservation	$2.34	$2.59	$2.02	$1.68
Fort Berthold Reservation	2.91	3.32	2.25	2.22
Fort Peck Reservation	3.75	4.79	2.43	2.73
Navajo Allotted Leases in the Navajo Reservation	2.55	2.58	2.00	1.64
Turtle Mountain Reservation	3.33	3.40	2.23	2.24
ONRR-designated areas	May 2018	Jun. 2018	Jul. 2018	Aug. 2018
Fort Belknap Reservation	$1.70	$1.89	$2.00	$2.13
Fort Berthold Reservation	2.07	2.44	2.43	2.56
Fort Peck Reservation	3.03	2.85	3.20	3.07
Navajo Allotted Leases in the Navajo Reservation	1.72	1.96	2.13	2.31
Turtle Mountain Reservation	2.06	2.15	2.27	2.26
ONRR-designated areas	Sep. 2018	Oct. 2018	Nov. 2018	Dec. 2018
Fort Belknap Reservation	$2.07	$2.03	$2.92	$5.51
Fort Berthold Reservation	2.52	2.61	2.95	3.59
Fort Peck Reservation	3.44	3.66	3.40	4.98
Navajo Allotted Leases in the Navajo Reservation	2.13	2.03	2.34	3.35
Turtle Mountain Reservation	2.27	2.46	2.93	4.29

For information on how to report additional royalties due to major portion prices, please refer to ONRR's Dear Payor letter, dated December 1, 1999, which is available on ONRR's website at *http://www.onrr.gov/ReportPay/PDFDocs/991201.pdf.*

Authorities: Indian Mineral Leasing Act, 25 U.S.C. 396a-g and the Act of March 3, 1909, 25 U.S.C. 396; Indian Mineral Development Act of 1982, 25 U.S.C. 2103 *et seq.;* Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*

Kimbra G. Davis,

Director, Office of Natural Resources Revenue.

[FR Doc. 2020–16902 Filed 8–3–20; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Red Dot Sights and Components Thereof, DN 3477;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Trijicon, Inc. on July 29, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain red dot sights and components thereof. The complaint names as respondent: Holosun Technologies, Inc. of City of Industry, CA. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested

remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3477'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16886 Filed 8–3–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Vacuum Insulated Flasks and Components Thereof, DN 3476;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Steel Technology, LLC d/b/a Hydro Flask and Helen of Troy Limited on July 29, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vacuum insulated flasks and components thereof. The complaint names as respondents: Everich and Tomic Houseware Co., Ltd. of China and/or Zhejiang Tongfu Holdings Co., Ltd. of China; Cangnan Kaiyisi E-Commerce Technology Co., Ltd. of China; Shenzhen Huichengyuan Technology Co., Ltd. of China; Sinbada Impex Co., Ltd. of China; Yongkang Huiyun Commodity Co., Ltd. of China; Wuyi Loncin Bottle Co., Limited of China; Yiwu Honglu Daily Necessities Co., Ltd. of China; Zhejiang Yuchuan Industry & Trade Co., Ltd. of China; Zhejiang Yongkang Unique Industry & Trade Co., Ltd. of China; Suzhou Prime Gifts Co., Ltd. of China; Hangzhou Yuehua Technology Co., Ltd. of China; Guangzhou Yawen Technology Co., Ltd. of China; Yiwu Yiju E-commerce Firm of China; Jinhua Ruizhi Electronic Commerce Co., Ltd. of China; Womart

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

(Tianjin) International Trade Co., Ltd. of China; Shenzhen Yaxin General Machinery Co., Ltd. of China; Dunhuang Group a.k.a. DHgate of China; Bonanza.com, Inc. of Seattle, WA; Sheefly aka Wang Xiaojun of China; Grill Chief Inc. of Newport Beach, CA; OnlineDealKart Corp. of Santa Fe Springs, CA; Eddie Bauer, LLC of Bellvue, WA; PSEB Holdings, LLC of Wilmington, DE; NuRich, LLC and NuRich Accounting, LLC of Atlanta, GA; and HydroFlaskPup of Phoenix, AZ and/or Liyuanxiaoqu, of China. The complainant requests that the Commission issue a general exclusion order or in the alternative, a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3476'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16885 Filed 8–3–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1534–1536 (Preliminary)]

Methionine From France, Japan, and Spain; Institution of Anti-Dumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of its investigations and commencement of preliminary phase antidumping duty investigation Nos. 731–TA–1534–1536 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of methionine from France, Japan, and Spain, provided for in subheadings 2930.40.00 and 2930.90.46 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by September 14, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by September 21, 2020.

DATES: July 29, 2020.

FOR FURTHER INFORMATION CONTACT: Calvin Chang ((202) 205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to petitions filed on July 29, 2020, by Novus International, Inc., St. Charles, Missouri.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting the Title VII (antidumping duty) preliminary phase staff conference through video conferencing on August 19, 2020. Requests to participate in this video conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before August 17, 2020. Please provide an email address for each conference participant in the email. Information on conference procedures will be provided separately and guidance on joining the video conference will be available on the Commission's Daily Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System EDIS *https://edis.usitc.gov.* No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 24, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony to the Commission on or before 12:00 p.m. August 18, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

(Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.)

By order of the Commission.

Issued: July 30, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16923 Filed 8–3–20; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a teleconference meeting of the Advisory Committee on Actuarial Examinations. The meeting will be closed to the public.

DATES: The meeting will be held on August 20, 2020, from 1:00 p.m. to 5:00 p.m. (EDT), and August 21, 2020, from 1:00 p.m. to 5:00 p.m. (EDT).

ADDRESSES: The meeting will be held by teleconference.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–

3648 (not a toll free number) or *Elizabeth.J.Vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet by teleconference on August 20, 2020, from 1:00 p.m. to 5:00 p.m. (EDT) and August 21, 2020, from 1:00 p.m. to 5:00 p.m. (EDT). The meeting will be closed to the public.

The purpose of the meeting is to review the July 2020 Basic (EA–1) and July 2020 Pension (EA–2L) Examinations in order to make recommendations relative thereto, including the minimum acceptable pass scores.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: July 23, 2020.

Thomas V. Curtin, Jr.

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2020–16358 Filed 8–3–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

[Agency Docket Number DOL–2020–0005]

Request for Comments for Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR'') Report

AGENCY: Bureau of International Labor Affairs, United States Department of Labor and Office of the United States Trade Representative.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor and the United States Trade Representative in preparing a report on labor capacity-building efforts under Chapter 16 (''the Labor Chapter'') and Annex 16.5 of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR''). Comments are also welcomed on efforts made by the CAFTA–DR countries to implement the labor obligations under the Labor Chapter and the recommendations contained in a paper entitled, ''The Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity'' (the ''White Paper''). This report is required under the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA–DR Implementation Act). The reporting function and the responsibility for soliciting public comments required under this Act were assigned to the Secretary of Labor in consultation with the United States Trade Representative (USTR). The upcoming report will consolidate reporting periods to cover January 1, 2016, through February 29, 2020. Public comments received in response to the November 21, 2017, **Federal Register** Notice soliciting input on labor capacity-building efforts under the CAFTA–DR will be taken under consideration for this upcoming report.

Public comments should be submitted electronically to *www.regulations.gov,* the Federal e-rulemaking portal. Comments may also be submitted by postal or electronic mail to Giorleny Altamirano Rayo, Advisor, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–5006, Washington, DC 20210, *Rayo.Giorleny.D@DOL.gov.* Comments that are mailed must be received by the date indicated for consideration. Also, please note that due to security concerns, postal delivery in Washington, DC, may be delayed. Therefore, in order to ensure that comments receive full consideration, the Department encourages the public to submit comments via the internet as indicated above. Please submit only one copy of your comments by only one method. Also, please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. The Department cautions commenters not to include personal information, such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such information will become viewable by the public on the *http://www.regulations.gov* website. It is each commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment. If you are unable to provide submissions by either of these means, please contact Giorleny Altamirano Rayo (202–693–4868) to arrange for an alternative method of submission.

DATES: Written comments are due no later than 5 p.m. (ET) September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Giorleny Altamirano Rayo, Advisor, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–5006, Washington, DC 20210. Email: *Rayo.Giorleny.D@DOL.gov,* Telephone: 202–693–4868.

SUPPLEMENTAL INFORMATION:

1. Background Information

During the legislative approval process for the CAFTA–DR, the Administration and the Congress reached an understanding on the need to support labor capacity-building efforts linked to recommendations identified in the ''White Paper'' of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic. CAFTA–DR-specific trade capacity-building funds were appropriated through fiscal year 2010 and subsequently, the Bureau of International Labor Affairs used its own appropriation to support technical assistance projects in CAFTA–DR partner countries through fiscal year 2020. For more information, see the full text of the CAFTA–DR at *https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text* and the ''White Paper'' at *http://www.sice.oas.org/labor/White%20Paper_e.pdf.*

Under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), the President must report biennially to the Congress on the progress made by the CAFTA–DR countries in implementing the labor obligations and the labor capacity-building provisions found in the Labor Chapter and in Annex 16.5, and in implementing the recommendations contained in the ''White Paper.'' Section 403(a)(4) requires that the President establish a mechanism to solicit public comments on the matters described in section 403(a)(3)(D) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a)(4) (listed below in 2).

By Proclamation, the President delegated the reporting function and the responsibility for soliciting public comments under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), to the Secretary of Labor, in consultation with the USTR (Proclamation No. 8272, 73 FR 38,297

(June 30, 2008)). This notice serves to request public comments as required by this section.

2. The Department of Labor Is Seeking Comments on the Following Topics as Required Under Section 403(a)(3)(D) of the CAFTA–DR Implementation Act

a. Capacity-building efforts by the United States government envisaged by Article 16.5 of the CAFTA–DR Labor Chapter and Annex 16.5;

b. Efforts by the United States government to facilitate full implementation of the ''White Paper'' recommendations; and

c. Efforts made by the CAFTA–DR countries to comply with Article 16.5 of the Labor Chapter and Annex 16.5 and to fully implement the ''White Paper'' recommendations, including progress made by the CAFTA–DR countries in affording to workers internationally recognized worker rights through improved capacity.

3. Requirements for Submission

Persons submitting comments must do so in English and must make the following note on the first page of their submissions: ''Comments regarding the CAFTA–DR Implementation Act.'' In order to be assured consideration, comments should be submitted by 5 p.m. (ET), September 3, 2020. The Department of Labor encourages commenters to make on-line submissions using the *www.regulations.gov* website. When entering this site, enter ''Request for Comments on Labor Capacity-Building Efforts Under the Dominican Republic-Central America-United States Free Trade Agreement'' on the home page search bar and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now.'' (For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on ''How to Use This Site'' (found on the bottom of the home page under ''Help'').)

The *www.regulations.gov* website allows users to provide comments by filling in a ''Type Comment field,'' or by attaching a document using an ''Upload File'' field. The Department prefers that uploaded submissions be in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the submission itself. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself and not as separate files.

As noted, the Department strongly urges submitters to file comments through the *www.regulations.gov* website.

Comments will be open to public inspection. Comments may be viewed on the *www.regulations.gov* website.

Authority: The authority for this notice is granted by the Federal Advisory Committee Act (5 U.S.C. App. 2) and the Executive Order No. 13889 of September 27, 2019.

Martha E. Newton,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2020–16854 Filed 8–3–20; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (20–064)]

Name of Information Collection: NASA Electronic Health Record System (EHRS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—Renewal of Existing Information Collection.

SUMMARY: The Office of Chief Health and Medical Officer (OCHMO), within the National Aeronautics and Space Administration (NASA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by September 3, 2020.

ADDRESSES: All comments should be addressed to Roger Kantz, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Roger Kantz, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *Roger.T.Kantz@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information includes standard use of Electronic Health Record System (EHRS) under NASA 10 HIMS regulations at all NASA Occupational Health (OH) clinics by authorized healthcare providers assigned to, employed by, contracted to, or under partnership agreement with NASA facilities. This EHRS is used in support of the NASA Occupational Health Program to generate medical records of medical care, diagnosis, treatment, surveillance examinations (*e.g.,* flight certification, special purpose and health maintenance), and exposure records (*e.g.,* hazardous materials and ionizing radiation).

Management and utilization of the EHRS at NASA clinics is carried out to implement the necessary supportive clinical services for each visit to the OH clinics. The OH clinics create, maintain and securely archive digital medical records and physical examination records of on (1) NASA civil service employees and applicants; (2) other Agency civil service and military employees working at NASA; (3) active or retired astronauts and active astronaut family members; (4) International Space Partner personnel, their families, or other space flight personnel on temporary or extended duty at NASA; (5) onsite contractor personnel who receive job-related examinations under the NASA Occupational Health Program, have work-related mishaps or accidents, or visit clinics for emergency or first-aid treatment; and (6) visitors to NASA Centers who use clinics for emergency or first-aid treatment or who apply for use of NASA facilities. The legal medical record is the documentation of health care services provided to an individual; it is used for clinical decision making, following accurate recording of observations, actions and analysis of diagnostic tests. The legal medical record in this instance is digital recorded data collected and used for providing healthcare at the NASA OH clinics. Additionally, the medical record is used as a tool for evaluating the adequacy, appropriateness and quality of care.

Such records contain standard clinical information resulting from physical examinations, laboratory and other relevant diagnostic tests, and medical history surveys; screening examination results; immunization records; administration of medications prescribed by private/personal or NASA physicians; consultation records; and hazardous exposure as well as other health hazard/abatement data.

NASA collects, archives, and secures information from individuals visiting the OH clinics requiring routine medical examination in compliance with the following regulations:

- 2015 Joint Commission (JC) Standards for Ambulatory Care IM.01.01.01, IM.02.01.03, IM.02.02.01, IM.02.02.03
- NASA Procedural Requirements, NPR 1800.1C.
- NASA Records Retention Schedules NRRS 1441.1.
- 5 U.S.C. 552a, Privacy Act, 1974.
- 42 U.S.C. 2472; 44 U.S.C. 3101; Public Law 92–255.
- NIST SP 800–53 revision 4, Recommended Security Controls for Federal Information Systems.
- NIST SP 800–53A, Techniques and Procedures for Verifying the Effectiveness of Security Controls in Federal Information Systems.
- NPR 2810.1, Security of Information Technology.

II. Methods of Collection

Electronic and optionally by paper.

III. Data

Title: NASA Electronic Health Record System (EHRS).

OMB Number: 2700-xxxx.

Type of Review: Renewal of Existing Information Collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 63,260.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 63,260.

Estimated Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 31,630.

Estimated Total Annual Cost: $819,217.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Roger Kantz,

NASA PRA Clearance Officer.

[FR Doc. 2020–16863 Filed 8–3–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (20–065)]

Name of Information Collection: NASA Universal Registration and Data Management System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by September 3, 2020.

ADDRESSES: All comments should be addressed to Travis Kantz, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 281–792–7885.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Travis Kantz, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *travis.kantz@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Universal Registration and Data Management System is a comprehensive tool designed to allow learners (*i.e.,* students, educators, and) to apply to NASA STEM engagement opportunities (*e.g.,* internships, fellowships, challenges, educator professional development, experiential learning activities, etc.) in a single location. NASA personnel manage the selection of applicants and implementation of engagement opportunities within the Universal Registration and Data Management System. The information collected will be used by the NASA Office of STEM Engagement (OSTEM) in order to review applications for participation in NASA engagement opportunities. The information is reviewed by OSTEM project and activity managers, as well as NASA mentors who would be hosting students. This information collection will consist of student-level data such as demographic information submitted as part of the profile registration and application process.

II. Methods of Collection

Online/web-based.

III. Data

Title: NASA Universal Registration and Data Management System.

OMB Number:

Type of Review: New Collection.

Affected Public: Eligible students or educators, and/or may voluntarily apply for an internship or fellowship experience at a NASA facility, or register for a STEM engagement opportunity (*e.g.,* challenges, educator professional development, experiential learning activities, etc.). Parents/caregivers of eligible student applicants (at least 16 years of age but under the age of 18) may voluntarily provide consent for their eligible student applicants to apply.

Estimated Number of Respondents: 4,112.

Annual Responses: 164,500.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 54,833.

Estimated Total Annual Cost: $1,019,208.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Roger Kantz,

NASA PRA Clearance Officer.

[FR Doc. 2020–16864 Filed 8–3–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–20–0017; NARA–2020–055]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by September 18, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Commerce, Bureau of the Census, Ombudsman Records (DAA–0029–2020–0001).
2. Department of Energy, Agency-wide, Financial Management and Reporting Records (DAA–0434–2020–0006).
3. Department of Energy, Agency-wide, Grant and Cooperative Agreement Records (DAA–0434–2020–0007).
4. Department of Energy, Western Area Power Administration, Transmission Infrastructure Program Records (DAA–0201–2020–0002).
5. Department of Energy, Western Area Power Administration, Engineering, Design, and Construction Records (DAA–0201–2020–0003).
6. Department of Energy, Western Area Power Administration, Land Program Records (DAA–0201–2020–0004).
7. Department of Energy, Western Area Power Administration, Legal and Legislative Records (DAA–0201–2020–0005).
8. Department of Homeland Security, U.S. Customs and Border Protection, Internal Investigation Records (DAA–0568–2018–0001).
9. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Rulemaking Records (DAA–0571–2016–0004).
10. Department of Transportation, Pipeline and Hazardous Materials Safety

Administration, Inspection Files (DAA–0571–2020–0008).

11. Department of the Treasury, Treasury Inspector General for Tax Administration, Routine Litigation Case Files (DAA–0056–2018–0012).

12. Department of Veterans Affairs, Veterans Health Administration, Caregiver Records Management Application System (DAA–0015–2020–0001).

13. Department of Veterans Affairs, Veterans Health Administration, Disruptive Behavior System Records (DAA–0015–2020–0002).

14. Federal Communications Commission, Consumer and Governmental Affairs Bureau, Informal Complaints System (DAA–0173–2019–0002).

15. National Science Foundation, Agency-wide, Agreement Files (DAA–0307–2020–0004).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–16861 Filed 8–3–20; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–288; NRC–2020–0075]

In the Matter of Dr. Melinda P. Krahenbuhl, Reed Research Reactor, Portland, Oregon

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Confirmatory Order (CO) IA–20–040 to Dr. Melinda Krahenbuhl, former Director of the Reed College, Reed Research Reactor, Portland, Oregon, as a result of a successful alternative dispute resolution (ADR) mediation session held on June 22, 2020. The CO confirms commitments agreed to during the ADR mediation, and the NRC is satisfied that the concerns discussed in Order IA–19–035 issued to Dr. Krahenbuhl on March 16, 2020, will be addressed with the issuance of this CO. Accordingly, the NRC is withdrawing the March 16, 2020, Order prohibiting Dr. Krahenbuhl's involvement in NRC-licensed activities for three years and, subject to the satisfactory completion of the additional corrective actions described in Order IA–20–040, the NRC will take no further action concerning the violations discussed in Order IA–19–035. The Order is effective on the date of issuance.

DATES: The Order was issued on July 27, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0075 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0075. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Order IA–19–035, issued to Dr. Krahenbuhl on March 16, 2020, is available in ADAMS under Accession No. ML20064F133 and Order IA–20–040 issued on July 27, 2020, is available in ADAMS under Accession No. ML20195B129.

FOR FURTHER INFORMATION CONTACT: Robert Fretz, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9235, email: *Robert.Fretz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: July 30, 2020.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Attachment—Confirmatory Order

United States of America Nuclear Regulatory Commission

In the Matter of Dr. Melinda P. Krahenbuhl IA–20–040

Confirmatory Order Effective Upon Issuance

I.

Dr. Melinda Krahenbuhl is the former Director of the Reed College, Reed Research Reactor (RRR) located in Portland, Oregon. Reed College (Reed) holds Renewed Facility Operating License (FOL) No. R–112 (Docket No. 50–288) issued on April 24, 2012, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Parts 30, 50, and 70 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the operation of the RRR in accordance with conditions specified therein.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on June 22, 2020.

II.

On April 8, 2016, the NRC's Office of Investigations (OI) opened an investigation (OI Case No. 4–2016–022) at Reed to determine whether the RRR Director (Director) willfully documented and submitted to the NRC incomplete or inaccurate information associated with an application for a 10 CFR part 55 reactor operator license. A second investigation (OI Case No. 4–2017–023) at Reed was opened on March 28, 2017, to determine whether the Director willfully provided incomplete or inaccurate information to the NRC regarding an application for a 10 CFR part 55 license (a senior reactor operator license). In a letter dated November 20, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20044E056), the NRC notified Dr. Krahenbuhl of the apparent violations identified during the investigations.

On January 10, 2020, the NRC held a predecisional enforcement conference (PEC) with Dr. Krahenbuhl and her representative at its headquarters facility in Rockville, Maryland, to obtain additional information regarding the apparent violations. On March 16, 2020, the NRC issued Order IA–19–035 (ADAMS Accession No. ML20064F133) suspending Dr. Krahenbuhl's senior reactor operator license (License No. SOP–70678–1) issued pursuant to 10 CFR part 55 and prohibiting Dr. Krahenbuhl from any involvement in NRC-licensed activities for a period of 3 years. The Order also provided her the opportunity to request a hearing within 30 days of Order issuance or request ADR mediation with the NRC in an effort to resolve any disputes regarding the violations, appropriate enforcement actions, and appropriate corrective actions.

In response to the Order, Dr. Krahenbuhl requested the use of ADR mediation. On June 22, 2020, the NRC, Dr. Krahenbuhl, and her representatives participated in a virtual ADR session that was mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in

which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This CO is issued pursuant to the agreement reached during the June 22, 2020 ADR mediation session.

III.

During the ADR session, Dr. Krahenbuhl and the NRC reached a preliminary settlement agreement. The elements of the agreement include the following:

The NRC and Dr. Melinda Krahenbuhl agreed that violations of NRC requirements associated with reactor operator licensing occurred during the 2015 and 2016 time frame. The NRC and Dr. Melinda Krahenbuhl also agreed that it is vitally important that all information provided to the NRC be complete and accurate, and that integrity in relationships with regulatory staff is essential to maintaining public health and safety when engaging in NRC-regulated activities.

The NRC acknowledges that Dr. Melinda Krahenbuhl was instrumental in the development of corrective actions taken by Reed College that addressed many of the NRC's concerns raised in the March 16, 2020, Order (ADAMS Accession No. ML20055F671) prior to her departure from Reed.

The NRC and Dr. Melinda Krahenbuhl acknowledged that the terms and conditions agreed to during the mediation are not binding on either party until memorialized in a CO issued by the NRC to Dr. Melinda Krahenbuhl relating to this matter.

The additional commitments made in the preliminary settlement agreement, as signed by both parties, consist of the following terms and conditions:

A. Dr. Krahenbuhl will prepare and complete a presentation and newsletter article on a personal case study regarding topics such as the importance of complete and accurate information and integrity in relationships with regulatory staff. During the presentations given at the industry forums, Dr. Krahenbuhl will honestly answer questions about what she failed to do and the impact that this had on carrying out her responsibilities.

1. By September 30, 2020, Dr. Krahenbuhl will submit a draft of the presentation and article to the Director, Division of Advanced Reactors and Non-power Production and Utilization Facilities, for review.

2. Within 15 calendar days of the NRC's receipt of the presentation and article submitted by Dr. Krahenbuhl, the NRC will provide its comments, if any, to Dr. Krahenbuhl.

3. Within 15 calendar days after receiving the NRC's comments, Dr. Krahenbuhl will submit the presentation and article for consideration per paragraph A.4.

4. Dr. Krahenbuhl will submit the approved paper for publication to two of the organizations shown below and give the personal case study presentation at two of the following organizations or industry forums (two articles and two presentations). The intent of the personal case study presentation is that it would be given within 1 year from the date of the CO:

- American Nuclear Society (ANS Quarterly Meeting)
- Health Physics Society
- Women in Nuclear (WIN)
- TRTR Annual Conference
- ANSI medical
- NRC's Annual Regulatory Information Conference (RIC)

If any of the forums listed above do not allow Dr. Krahenbuhl to present, Dr. Krahenbuhl will notify the Director, Office of Enforcement, with a proposed substitute.

B. Dr. Krahenbuhl will undertake a study and submit recommendations to the appropriate American National Standards Institute (ANSI)/American Nuclear Society (ANS) (sub)committee to enhance guidance on standards associated with the selection and training of personnel for research reactors (*e.g.,* ANSI/ANS–15.4). This study may be conducted in cooperation with other industry colleagues familiar with this topic.

1. Dr. Krahenbuhl will submit a draft of the recommendations to the Director, Division of Advanced Reactors and Non-power Production and Utilization Facilities, for review, at a date to be determined. The NRC and Dr. Krahenbuhl agreed subsequent to the ADR mediation session that the draft recommendations would be provided for NRC review on August 14, 2020.

2. Within 15 calendar days of the NRC's receipt of the recommendations submitted by Dr. Krahenbuhl, the NRC will provide its comments, if any, to Dr. Krahenbuhl.

3. After receiving the NRC's comments, Dr. Krahenbuhl will submit the recommendations to the appropriate ANSI/ANS (sub)committee for consideration this year.

C. Within 30 days of issuance of the CO, Dr. Krahenbuhl agrees to hire an executive coach, with demonstrated experience in this field, who will provide objective feedback on her interactions, thought processes, blind spots and strategic decision-making. Dr. Krahenbuhl agrees to retain the services of the executive coach for a period of 12 months. Within six months, Dr. Krahenbuhl agrees to submit a report outlining the lessons learned from the executive coach and provide a summary of the feedback provided to Dr. Krahenbuhl to the Director, Division of Advanced Reactors and Non-power Production and Utilization Facilities. Dr. Krahenbuhl agrees to submit a second report outlining the lessons learned after the 12-month period has ended.

D. Dr. Krahenbuhl agrees that she will refrain from applying for positions with an NRC licensee holding a Non-power Research or Test Reactor license, or an Operating Power Reactor license, for a period of 1 year, beginning March 16, 2020.

The NRC is satisfied that its concerns will be addressed by making the commitments described above legally binding through the issuance of this CO. Accordingly, consistent with Section 2.7.8 of its Enforcement Manual, the NRC is withdrawing the March 16, 2020, Order prohibiting Dr. Krahenbuhl's involvement in NRC-licensed activities for 3 years. Subject to the satisfactory completion of the corrective actions described in Section V below, the NRC will take no further action concerning the violations discussed in the March 16, 2020, Order.

Additionally, as part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, ''Violations Identified Because of Previous Enforcement Action,'' the NRC will consider enforcement discretion for violations with similar root causes that occur prior to or during implementation of the corrective actions specified in this CO.

On July 23, 2020, Dr. Melinda Krahenbuhl consented to issuing this CO with the commitments, as described in Section V below. Dr. Krahenbuhl further agreed that this CO is to be effective upon issuance, the agreement memorialized in this CO settles the matter between the parties, and that she has waived her right to a hearing.

IV.

I find that Dr. Melinda Krahenbuhl's actions completed, as described in Section III above, combined with the commitments as set forth in Section V, are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Dr. Melinda Krahenbuhl's commitments be

confirmed by this CO. Based on the above and Dr. Krahenbuhl's consent, this CO is effective upon issuance.

By no later than thirty (30) days after the completion of the commitments specified in Section V, Dr. Melinda Krahenbuhl is required to notify the NRC in writing and summarize her actions.

V.

Accordingly, pursuant to Sections 104c, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered, effective upon issuance, that:*

A. Dr. Krahenbuhl will prepare and complete a presentation and newsletter article on a personal case study regarding topics such as the importance of complete and accurate information and integrity in relationships with regulatory staff. During the presentations given at the industry forums, Dr. Krahenbuhl will honestly answer questions about what she failed to do and the impact that this had on carrying out her responsibilities.

1. By September 30, 2020, Dr. Krahenbuhl will submit a draft of the presentation and article to the Director, Division of Advanced Reactors and Non-power Production and Utilization Facilities, for review.

2. Within 15 calendar days of the NRC's receipt of the presentation and article submitted by Dr. Krahenbuhl, the NRC will provide its comments, if any, to Dr. Krahenbuhl.

3. Within 15 calendar days after receiving the NRC's comments, Dr. Krahenbuhl will submit the presentation and article for consideration per paragraph A.4.

4. Dr. Krahenbuhl will submit the approved article for publication to two of the following organizations, and give the approved personal case study presentation at two of the following organizations' industry forums:

- American Nuclear Society (ANS Quarterly Meeting)
- Health Physics Society
- Women in Nuclear (WIN)
- National Organization of Test, Research, and Training Reactors (TRTR Annual Conference)
- American National Standards Institute (ANSI) Medical Subcommittee
- NRC's Annual Regulatory Information Conference (RIC)

The two personal case study presentations shall be given within 1 year from the date of the CO. If any of the organizations listed above do not allow Dr. Krahenbuhl the opportunity to present the approved personal case study at a sponsored conference, Dr. Krahenbuhl will notify the Director, Office of Enforcement, with a proposed substitute.

B. Dr. Krahenbuhl will undertake a study and submit recommendations to the appropriate ANSI/ANS (sub)committee to enhance guidance on standards associated with the selection and training of personnel for research reactors (*e.g.,* ANSI/ANS–15.4). This study may be conducted in cooperation with other colleagues familiar with this topic.

1. By August 14, 2020, Dr. Krahenbuhl will submit a draft of the recommendations to the Director, Division of Advanced Reactors and Non-power Production and Utilization Facilities, for review.

2. Within 15 calendar days of the NRC's receipt of the recommendations submitted by Dr. Krahenbuhl, the NRC will provide its comments, if any, to Dr. Krahenbuhl.

3. After receiving the NRC's comments, Dr. Krahenbuhl will submit the recommendations to the appropriate ANSI/ANS (sub)committee for consideration this year.

C. Within 30 days of issuance of the CO, Dr. Krahenbuhl agrees to hire an executive coach, with demonstrated experience in this field, who will provide objective feedback on her interactions, thought processes, blind spots, and strategic decision-making. Dr. Krahenbuhl agrees to retain the services of the executive coach for a period of 12 months. Within 6 months of retaining the services of the executive coach, Dr. Krahenbuhl agrees to submit a report outlining the lessons learned from the executive coach to the Director, Division of Advanced Reactors and Non-power Production and Utilization Facilities. Dr. Krahenbuhl agrees to submit a second report outlining the lessons learned after the 12-month period has ended.

D. Dr. Krahenbuhl agrees that she will refrain from applying for positions with an NRC licensee holding a Non-power Research or Test Reactor license, or an Operating Power Reactor license, for a period of 1 year, beginning March 16, 2020.

The Director, Office of Enforcement, may, in writing, relax, rescind, or withdraw any of the above conditions upon demonstration by Dr. Krahenbuhl of good cause.

VI.

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this CO, other than Dr. Melinda Krahenbuhl, may request a hearing within thirty (30) calendar days of the date of issuance of this CO. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant

has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person other than Dr. Melinda Krahenbuhl requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this CO and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing request is granted to a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this CO should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this CO without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Dated this 27th day of July 2020.

[FR Doc. 2020–16907 Filed 8–3–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0175]

Notice of Intent To Review and Update the Generic Environmental Impact Statement for License Renewal of Nuclear Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Public scoping meetings and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) intends to gather information through the public scoping process to support the review to determine whether to update NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Final Report'' (LR GEIS). The NRC is seeking public input on the proposed action and has scheduled public scoping meetings.

DATES: Submit comments by November 2, 2020. 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. The NRC will hold four public webinars on August 19, 2020 and August 27, 2020 from 1:30 p.m. to 4:00 p.m. EDT and 6:30 p.m. to 9:00 p.m. EDT.

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–2020–0175. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed

in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to: LicenseRenewal-GEIS@nrc.gov.*
- *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.

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: Jennifer A. Davis, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3835; email: *Jennifer.Davis@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0175 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0175.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced herein (if that document is available in ADAMS) is provided the first time that a document is referenced. All revisions of NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' can be found in ADAMS under the following accession numbers: NUREG–1437, Vol. 1 and 2, dated May 1996 (ADAMS Accession Nos. ML040690705 and ML040690738, respectively); NUREG–1437, Addendum 1, dated August 1999 (ADAMS Accession No. ML040690720); and NUREG–1437, Vol. 1, 2, and 3, Rev. 1, dated June 2013 (ADAMS Package Accession No. ML13107A023).

B. Submitting Comments

Please include Docket ID NRC–2020–0175 in the subject line of your comment submission in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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 submissions into ADAMS.

II. Discussion

In 1986, the NRC initiated a program to develop license renewal regulations and associated regulatory guidance in anticipation of receiving applications for the renewal of nuclear power plant operating licenses. The Atomic Energy Act of 1954, as amended authorizes the NRC to issue commercial nuclear power plant operating licenses for up to 40 years, and NRC's regulations allow for the renewal of these operating licenses for up to an additional 20 years. There are no specific limitations in the Atomic Energy Act or the NRC's regulations restricting the number of times a license may be renewed. The license renewal process includes reviewing the license renewal application, conducting safety and environmental reviews, and then, if all applicable safety standards are met, renewing the license. The review proceeds along two independent regulatory tracks: One considers safety issues and the other environmental issues. The reviews are directed by regulations designed to ensure safe operation and protection of the environment during the license renewal term. The NRC's regulations for the safety review are set forth in part 54 of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC's environmental protection regulations implementing Section 102(2) of the National Environmental Policy Act (NEPA) are set forth in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Renewal of a nuclear power plant operating license also requires the preparation of a safety evaluation report and an environmental impact statement (EIS) (10 CFR 51.20(b)(2)).

The LR GEIS summarizes the findings of a systematic inquiry into the environmental impacts of continued operations and refurbishment activities associated with license renewal. Of the 78 environmental NEPA issues identified and analyzed by the NRC, 59 issues were determined to be generic (*i.e.,* Category 1); 19 issues were determined to be nuclear power plant-specific (*i.e.,* Category 2); and one issue, ''Electromagnetic fields, chronic effects,'' is uncategorized. Category 1 issues concern those potential environmental impacts resulting from license renewal that are common or generic to all nuclear power plants (or for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic). Category 2 issues concern those potential environmental impacts resulting from license renewal that do not meet the criteria for a Category 1 issue and, as such, require a plant-specific analysis to determine the level of impact. The uncategorized issue would also be addressed by the NRC in each plant-specific supplemental EIS.

Impact levels (small, moderate, or large) have been determined for most NEPA issues (*e.g.,* land use, air, water) evaluated in the LR GEIS. A small impact means that the environmental effects are not detectable or are so minor that they would neither destabilize nor noticeably alter any important attribute of the resource. A moderate impact means that the environmental effects are sufficient to alter noticeably, but not destabilize, important attributes of the resource. A large impact means that the environmental effects would be clearly noticeable and would be sufficient to destabilize important attributes of the resource.

The LR GEIS has been effective in focusing the NRC's resources on important license renewal environmental impact issues and has increased the efficiency of the environmental review process. Currently, 94 nuclear units at 59 plant sites have received renewed operating licenses; 4 units at 2 plant sites have received subsequent (second) renewed operating licenses.

During the review of the LR GEIS, the NRC will re-evaluate potential

environmental impacts and apply lessons learned and knowledge gained during previous license renewal environmental reviews. In addition, public comments received during previous license renewal environmental reviews will be re-examined to validate existing environmental NEPA issues and identify new ones. Upon completion of the review, the NRC will consider the need to modify, add to, consolidate, or delete any of the 78 environmental NEPA issues currently evaluated in the LR GEIS.

In the introductory remarks to appendix B to subpart A of part 51, ''Environmental Effects of Renewing the Operating License of a Nuclear Power Plant,'' the Commission stated that, on a 10-year cycle, it intends to review the material in Table B–1 and update it, if necessary. The previous revision cycle was completed with the issuance of a final rule and LR GEIS, Revision 1, on June 20, 2013 (78 FR 37281). Should the NRC proceed with an update to the LR GEIS, and a final rule to codify the update, the NRC's goal is to complete this effort by the end of 2023.

III. Request for Comments

This notice informs the public of the NRC's intention to review and update the LR GEIS and provide the public with an opportunity to comment on the review and propose areas for update. This step is the initial opportunity for the public to participate in the review by means of the environmental scoping process, as defined in 10 CFR 51.29, ''Scoping-environmental impact statement and supplement to environmental impact statement.'' At the conclusion of the scoping period, the NRC will consider the results of its review and public comments to determine whether to proceed with the update. The NRC will also publish a concise summary (scoping summary report) of its determinations and conclusions reached. Environmental reviews will continue under the current NRC NEPA regulatory framework throughout the course of this effort. If the NRC determines that an update is not necessary, notice of this decision will be published in the **Federal Register**.

For each license renewal review, impacts requiring nuclear power plant-specific analysis must be analyzed by the applicant in its environmental report and by the NRC in a supplemental EIS. The NRC prepares a supplement to the LR GEIS during each license renewal review that evaluates the environmental impacts specific to that nuclear power plant. Supplemental EISs may be useful during the scoping process, helping public participants understand the environmental review process and the NEPA issues associated with license renewal. Supplements to the LR GEIS can be viewed on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/*.

The NRC will first conduct scoping, document its determinations in a concise scoping summary report, and will then prepare a draft updated LR GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process will be used to accomplish the following:

a. Determine whether to update the LR GEIS;

b. Define the proposed action;

c. Determine the scope of the update and identify significant issues to be analyzed in depth;

d. Identify and eliminate from detailed study issues that are peripheral or are not significant; or were covered by a prior environmental review;

e. Identify environmental assessments and other ElSs under development or consideration related to the scope of the LR GEIS update;

f. Identify any review and consultation requirements related to the proposed action; and

g. Describe how the LR GEIS revision will be prepared.

The NRC invites the following persons to participate in scoping:

a. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

b. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

c. Any affected Indian Tribe; and

d. Any person who requests or has requested an opportunity to participate in the scoping process.

IV. Specific Request for Comments

In accordance with regulations (appendix B to subpart A of 10 CFR part 51), the NRC has completed a preliminary review of the LR GEIS and identified the following NEPA and related issues for possible revision and update. Per the regulations, the NRC invites the public to comment on the results of the preliminary review and requests proposals for other areas of the LR GEIS that should be updated.

• *Greenhouse gas emissions (new NEPA issue)*—The Council on Environmental Quality recently proposed guidance titled ''Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions'' (84 FR 30097; June 26, 2019) to address how NEPA analyses should address greenhouse gas emissions. The NRC should evaluate this new NEPA issue in the LR GEIS and determine the issue category and level of impact.

• *Groundwater quality degradation (plants with cooling ponds in salt marshes) (revise existing NEPA issue)*—The NEPA issue ''Groundwater quality degradation (plants with cooling ponds in salt marshes)'' affects two nuclear plants. This NEPA issue should be consolidated with ''Groundwater quality degradation resulting from water withdrawals'' and expanded to consider the environmental effects of saltwater intrusion/encroachment on adjacent surface water quality. The NRC should clarify the impacts of these NEPA issues in the LR GEIS.

• *Threatened, endangered, and protected species and essential fish habitat (revise existing NEPA issue)*—This NEPA Issue should be divided into separate interagency consultation requirements based on the Federal statutes that afford the species or habitats special status or protections. Some of these requirements do not apply to all nuclear plants (*e.g.,* ''Essential Fish Habitat''). The issue headings should be changed to ''Federally Protected Species and Habitats'' to clarify that these issues do not include Federal protection categories that do not require interagency consultation or non-Federal protection categories, such as State-listed species. The meaning of ''protected'' should be clarified. A new finding should be added for the protection of marine resources to address requirements for interagency consultation with the National Oceanic and Atmospheric Administration under the National Marine Sanctuaries Act. The NRC should clarify the impacts of these NEPA issues in the LR GEIS.

• *Subsequent (second) license renewal (update LR GEIS to address this issue)*—The findings in the LR GEIS apply to subsequent (second) license renewal environmental reviews. The NRC should include this clarification in the LR GEIS.

• *Updated guidance on evaluating radiological doses to aquatic and terrestrial biota (update LR GEIS to address this issue)*—In February 2019, the U.S. Department of Energy updated its standard for evaluating the potential effects of radionuclides on biota titled, ''DOE–STD–1153–2019, A Graded Approach for Evaluating Radiation Doses to Aquatic and Terrestrial Biota.''

The NRC should include conforming changes based on this new guidance in the LR GEIS.

• *Incorporate NEI 17–04 guidance and revised BEIR VII report (update LR GEIS to address this new information)*—Incorporate Nuclear Energy Institute (NEI) guidance NEI 17–04, Revision 1, ''Model SLR New and Significant Assessment Approach for SAMA,'' on identifying and considering new and significant information with respect to a prior severe accident mitigation alternatives (SAMA) analysis and new information from revised Biological Effects of Ionizing Radiation (BEIR) published BEIR–VII, entitled ''Health Risks from Exposure to Low Levels of Ionizing Radiation'' (National Research Council Committee). Also, the LR GEIS should address nuclear power plants that did not use NEI 05–01, Revision A, ''Severe Accident Mitigation Alternatives (SAMA) Analysis, Guidance Document.'' The NRC should include this information in the LR GEIS.

• *New and significant information (update LR GEIS to address this issue)*—Explain meaning and purpose of new and significant in LR GEIS for clarity and consistency. The NRC should include this information in the LR GEIS.

• *Include the environmental impacts of new large light water (LLW) reactors holding an operating license, construction permit, or combined license after June 30, 1995 (e.g., Vogtle 3 & 4) (update LR GEIS to address this issue)*—Vogtle LLW Units 3 and 4 are nearing completion and the licensee could consider applying for license renewal at some future date. The NRC should include license renewal environmental reviews for LLW reactor facilities permitted for construction after June 30, 1995 in the LR GEIS.

• *Advanced and/or small modular reactors (SMRs) (update LR GEIS to address this issue)*—An advanced reactor and SMR licensee could consider applying for license renewal. The NRC should include license renewal environmental reviews for advanced reactors and SMR facilities in the LR GEIS.

• *Consideration of the environmental impacts of license renewal beyond the 20-year license renewal term (update LR GEIS to address this issue)*—The Atomic Energy Act of 1954, as amended, allows the NRC to grant nuclear power plant operating licenses for up to 40 years. NRC regulations allow for the renewal of operating reactor licenses for an additional 20 years beyond the current licensing period. The staff is in the early stages of evaluating whether to extend the operating reactor license renewal period from 20 years to a maximum of 40 years. Should the impacts analysis in the LR GEIS consider the environmental impacts of license renewal beyond the current regulatory limit of 20 years (*e.g.,* up to a maximum of 40 years)?

The NRC is reviewing the Council on Environmental Quality's final rule, ''Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act'' (85 FR 43304; July 16, 2020) to determine what effect they may have on the LR GEIS update—should the NRC ultimately decide, based on its review and public comment, to update the LR GEIS.

V. Public Scoping Webinars

In accordance with 10 CFR 51.26(b), the scoping process may include a public scoping meeting to help identify significant issues related to a proposed action and to determine the scope of issues to be addressed. Since this is a generic environmental review activity, the NRC will hold four public webinars for the LR GEIS update.

Each webinar will be held online and will offer a telephone line for members of the public to submit comments. A court reporter will transcribe (record) all comments received during the webinar. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed in the **ADDRESSES** section of this notice. The dates and times for the public webinars follow:

Meeting	Date	Time	Location
Public Webinar	8/19/2020	1:30 p.m. to 4:00 p.m. (EDT)	Webinar Information: *https://usnrc.webex.com.* Event Number: 199 475 8415. Event Password: LRGEIS. Telephone Bridge Line: 1–888–989–9766. Participant Passcode: 9050307.
Public Webinar	8/19/2020	6:30 p.m. to 9:00 p.m. (EDT)	Webinar Information: *https://usnrc.webex.com.* Event Number: 199 208 1309. Event Password: LRGEIS. Telephone Bridge Line: 1–800–369–2104. Participant Passcode: 1290865.
Public Webinar	8/27/2020	1:30 p.m. to 4:00 p.m. (EDT)	Webinar Information: *https://usnrc.webex.com.* Event Number: 199 592 7925. Event Password: LRGEIS30. Telephone Bridge Line: 1–888–995–9725. Participant Passcode: 3382561.
Public Webinar	8/27/2020	6:30 p.m. to 9:00 p.m. (EDT)	Webinar Information: *https://usnrc.webex.com.* Event Number: 199 389 0782. Event Password: LRGEIS30. Telephone Bridge Line: 1–888–787–0206. Participant Passcode: 8529023.

Persons interested in attending this webinar should monitor the NRC's Public Meeting Schedule web page at *https://www.nrc.gov/pmns/mtg* for additional information, agendas for the meetings, and access information for the webinar. Participants should register in advance of the meeting by visiting the website (*https://usnrc.webex.com*) and using the event number provided above. A confirmation email will be generated providing additional details and a link to the webinar.

Dated: July 30, 2020.

For the Nuclear Regulatory Commission

Robert B. Elliott,

Chief, Environmental Review License Renewal Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–16952 Filed 8–3–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2020–0176]

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption in response to a February 25, 2020, as supplemented

by letter dated May 29, 2020, request from NextEra Energy Duane Arnold, LLC (NEDA, the licensee) for Duane Arnold Energy Center (DAEC). The exemption would permit the licensee to use funds from the DAEC decommissioning trust fund (DTF, the Trust) for spent fuel management activities and site restoration. The exemption would also allow such withdrawals without prior notification to the NRC. The NRC staff is issuing a final Environmental Assessment (EA) and final Finding of No Significant Impact (FONSI) associated with the proposed exemption.

DATES: The EA and FONSI referenced in this document are available on August 4, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0176 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0176. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the Availability of Documents section of this document.

FOR FURTHER INFORMATION CONTACT: Scott P. Wall, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2855; email: *Scott.Wall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an exemption from sections 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) of title 10 of the *Code of Federal Regulations* (10 CFR) for Renewed Facility Operating License No. DPR–49, issued to NEDA for DAEC, located in Linn County, Iowa. The licensee requested the exemption by letter dated February 25, 2020 (ADAMS Accession No. ML20056E054), as supplemented by letter dated May 29, 2020 (ADAMS Accession No. ML20153A371). The exemption would allow the licensee to use funds from the Trust for spent fuel management and site restoration activities, in the same manner that funds from the Trust are used under 10 CFR 50.82(a)(8) for decommissioning activities. In accordance with 10 CFR 51.21, the NRC prepared the following EA that analyzes the environmental impacts of the proposed action. Based on the results of this EA, which are provided in Section II, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would partially exempt NEDA from the requirements set forth in 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). Specifically, the proposed action would allow NEDA to use funds from the Trust for spent fuel management and site restoration activities not associated with radiological decommissioning and would exempt NEDA from the requirement for prior notification to the NRC for these activities.

The proposed action is in accordance with the licensee's application dated February 25, 2020, as supplemented by letter dated May 29, 2020.

Need for the Proposed Action

By letter dated January 18, 2019 (ADAMS Accession No. ML19023A196), NEDA submitted to the NRC a certification in accordance with 10 CFR 50.82(a)(1)(i), stating its determination to permanently cease power operations at DAEC in the fourth quarter of 2020. By letter dated March 2, 2020 (ADAMS Accession No. ML20062E489), NEDA updated this certification, stating that it plans to permanently cease power operations at DAEC on October 30, 2020.

As required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by the licensee if the withdrawals are for legitimate decommissioning activity expenses, consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decommissioning and does not include activities associated with spent fuel management or site restoration. Similarly, the requirements of 10 CFR 50.75(h)(1)(iv) restrict the use of decommissioning trust fund disbursements (other than for ordinary and incidental expenses) to decommissioning expenses until final decommissioning has been completed. Therefore, exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is needed to allow NEDA to use funds from the Trust for spent fuel management and site restoration activities.

NEDA stated that Table 1 of Attachment 1 of the application dated February 25, 2020, demonstrates that the Trust contains the amount needed to cover the estimated costs of radiological decommissioning, as well as spent fuel management and site restoration activities. The adequacy of funds in the Trust to cover the costs of activities associated with spent fuel management, site restoration, and radiological decommissioning through license termination is supported by the DAEC Post-Shutdown Decommissioning Activities Report and site-specific Decommissioning Cost Estimate submitted by NEDA in a letter dated April 2, 2020 (ADAMS Accession No. ML20094F603). The licensee stated that it needs access to the funds in the Trust in excess of those needed for radiological decommissioning to support spent fuel management and site restoration activities not associated with radiological decommissioning.

The requirements of 10 CFR 50.75(h)(1)(iv) further provide that, except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of the Trust in connection with the operation of the Trust, no disbursement may be made from the Trust without written notice to the NRC at least 30 working days in advance. Therefore, an exemption from 10 CFR 50.75(h)(1)(iv) is also needed to allow NEDA to use funds from the Trust for spent fuel management and site restoration activities without prior NRC notification.

In summary, by letter dated February 25, 2020, as supplemented by letter dated May 29, 2020, NEDA requested an exemption to allow Trust withdrawals, without prior written notification to the NRC, for spent fuel management and site restoration activities.

Environmental Impacts of the Proposed Action

The proposed action involves an exemption from regulatory requirements that are of a financial or administrative nature and that do not have an impact on the environment. The NRC has completed its evaluation of the proposed action and concludes that there is reasonable assurance that adequate funds are available in the Trust to complete all activities associated with radiological decommissioning as well as spent fuel management and site restoration. There is no decrease in safety associated with the use of the Trust to also fund activities associated with spent fuel management and site restoration. Section 50.82(a)(8)(v) of 10 CFR requires a licensee to submit a financial assurance status report annually between the time of submitting its site-specific decommissioning cost estimate and submitting its final radiation survey and demonstrating that residual radioactivity has been reduced to a level that permits termination of its license. Section 50.82(a)(8)(vi) of 10 CFR requires that if the remaining balance, plus expected rate of return, plus any other financial surety mechanism does not cover the estimated cost to complete radiological decommissioning, additional financial assurance must be provided to cover the cost of completion. These annual reports provide a means for the NRC to continually monitor the adequacy of available funding. Since the exemption would allow NEDA to use funds from the Trust that are in excess of those required for radiological decommissioning, the adequacy of the funds dedicated for radiological decommissioning are not affected by the proposed exemption. Therefore, there is reasonable assurance that there will be no environmental impact due to lack of adequate funding for radiological decommissioning.

The proposed action will not significantly increase the probability or consequences of radiological accidents. The NRC staff has concluded that the proposed action has no direct radiological impacts. There would be no change to the types or amounts of radiological effluents that may be released; therefore, there would be no change in occupational or public radiation exposure from the proposed action. There are no materials or chemicals introduced into the plant that could affect the characteristics or types of effluents released offsite. In addition, the method of operation of waste processing systems would not be affected by the exemption. The proposed action will not result in changes to the design basis requirements of structures, systems, and components (SSCs) that function to limit or monitor the release of effluents. All the SSCs associated with limiting the release of effluents will continue to be able to perform their functions. Moreover, no changes would be made to plant buildings or the site property from the proposed action. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents and no changes to the plant's National Pollutant Discharge Elimination System permits would be needed. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, no air quality impacts, and no impacts to historic and cultural resources from the proposed action. Therefore, there are no significant non-radiological environment impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the proposed action would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies or Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On July 10, 2020, the NRC notified Iowa State representatives of the EA and FONSI.

III. Finding of No Significant Impact

The licensee has requested an exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), which would allow NEDA to use funds from the Trust for spent fuel management and site restoration activities, without prior written notification to the NRC. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or non-radiological impacts. The reason the human environment would not be significantly affected is that the proposed action involves an exemption from requirements that are of a financial or administrative nature and that do not have an impact on the human environment. Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, and this FONSI incorporates by reference the EA included in Section II. Therefore, the NRC concludes that the proposed action will not have significant effects on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Other than the licensee's letter dated February 25, 2020, as supplemented by letter dated May 29, 2020, there are no other environmental documents associated with this review. These documents are available for public inspection as indicated in Section I.

Previous considerations regarding the environmental impacts of operating DAEC are described in the ''Final Environmental Statement Related to Operation of Duane Arnold Energy Center,'' dated March 1973 (ADAMS Accession No. ML091200609) and NUREG–1437, Supplement 42, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Duane Arnold Energy Center,'' Final Report, dated October 2010 (ADAMS Accession No. ML102790308).

IV. Availability of Documents

Date	Title	ADAMS Accession No.
2/25/2020	Letter from NEDA to NRC titled ''Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)''.	ML20056E054

Date	Title	ADAMS Accession No.
5/29/2020	Letter from NEDA to NRC titled ''Response to Request for Additional Information (RAI)—Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)''.	ML20153A371
4/2/2020	Letter from NEDA to NRC titled ''Post Shutdown Decommissioning Activities Report''	ML20094F603
3/2/2020	Letters from NEDA to NRC titled ''Certification of Permanent Cessation of Power Operations''	ML20062E489
1/18/2019		ML19023A196
10/2010	NUREG–1437, Supplement 42, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Duane Arnold Energy Center,'' Final Report.	ML102790308
3/1973	''Final Environmental Statement Related to Operation of Duane Arnold Energy Center''	ML091200609

Dated: July 30, 2020.

For the Nuclear Regulatory Commission

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–16936 Filed 8–3–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–234]

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 6, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
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).:* CP2020–234; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* July 29, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* August 6, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–16934 Filed 8–3–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to revise one General Privacy Act Systems of Records and one Customer Privacy Act Systems of Records. These updates are being made to facilitate the implementation of web-based collaboration and communication applications.

DATES: These revisions will become effective without further notice on September 3, 2020, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). Arrangements to view copies of any written comments received, to facilitate public inspection, will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision,

change, or addition, or when the agency establishes a new system of records.

The Postal Service has determined that General Privacy Act Systems of Records (SOR), USPS 500.000, Property Management Records and Customer Privacy Act SOR USPS 890.000, Sales, Marketing, Events, and Publications should be revised to support the implementation of web-based collaboration and communication applications with enhanced functionality. These applications will further encourage collaboration, promote meeting efficiency, and facilitate inter-team communication through multiple mediums.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights. The notices for USPS 500.000, Property Management Records and USPS 890.000, Sales, Marketing, Events, and Publications provided below in their entirety, are as follows:

SYSTEM NAME AND NUMBER:

USPS 500.000, Property Management Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S):

For records of accountable property, carpool membership, and use of USPS parking facilities: Vice President, Facilities, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

For records of building access and Postal Inspector computer access authorizations: Chief Postal Inspector, Inspection Service, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

For other records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S) OF THE SYSTEM:

1. To ensure personal and building safety and security by controlling access to USPS facilities.

2. To ensure accountability for property issued to persons.

3. To assign computer logon IDs; to identify USPS computer users to resolve their computer access problems by telephone; and to monitor and audit the use of USPS information resources as necessary to ensure compliance with USPS regulations.

4. To enable access to the USPS meeting and video web conferencing applications.

5. To enhance your online meeting experience by utilizing enhanced features and functionality, including voluntary polling to gather responses from attendees to generate reports or the interactive chat feature.

6. To facilitate team collaboration and communication through information sharing and cross-functional participation.

7. To allow task allocation and tracking among team members.

8. To allow users to communicate by telephone and instant-messaging through web-based applications.

9. To facilitate and support cybersecurity investigations of detected or reported information security incidents.

10. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.

11. To authenticate user identity for the purpose of accessing USPS information systems.

12. To provide parking and carpooling services to individuals who use USPS parking facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals who are granted regular access to USPS facilities through the issuance of a building access badge, or who are assigned accountable property.

2. Individuals with authorized access to USPS computers and information resources, including USPS employees, contractors, and other individuals; Individuals participating in web-based meetings, video conferences, collaboration, and communication applications.

3. Individuals who are members of carpools with USPS employees or otherwise regularly use USPS parking facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Building access information:* Records related to issuance of building access badges, including name, Social Security Number, Employee Identification Number, date of birth, photograph, postal assignment information, work contact information, finance number(s), duty location, and pay location.

2. *Property issuance information:* Records related to issuance of accountable USPS property, equipment, and controlled documents, including name, Social Security Number, equipment description, equipment serial numbers, and issuance date.

3. *Computer access authorization information:* Records related to computer users, including logon ID, Social Security Number, Employee Identification Number, or other assigned identifier, employment status information or contractor status information, and extent of access granted.

4. *Participant session data from web-based meetings and web conferences:* Participant name, participant's webcam-generated image (including presenters), recorded participant audio, video, and shared meeting screen content, chat interaction, polling questions and associated responses, participant join time and leave time, meeting duration, participant location, and participant media hardware information.

5. *Event session data from web-based meetings and web conferences:* Event start time, event status, event organizer, event presenter, event producer, event production type, event recording setting, total number of event media viewings.

6. *Historical device usage data from web-based meetings and web conferences:* Device type (such as mobile, desktop, or tablet), Device Operating System, Number of users of related Operating Systems, Operating System Version, MAC address, and IP address.

7. *Historical application usage data from web-based meetings and web conferences:* Number of active users, number of active users in groups, number of active group communication channels, number of messages sent, number of calls participated in, last activity date of a user, and number of guest users in a group.

8. *Web-based Public Switched Telephone Network data records:* Phone number, time phone call started, user name, call type, phone number called to, phone number called from, called to location, called from location, telephone minutes used, telephone minutes available, charges for use of telephone services, currency of charged telephone services, call duration, call ID, conference ID, phone number type,

blocked phone numbers, blocking action, reason for blocking action, blocked phone number display name, date and time of blocking.

9. *Web-based Direct Routing Public Switched Telephone Network records:* Call start time, user display name, SIP address, caller number, called to number, call type, call invite time, call failure time, call end time, call duration, number type, media bypass, SBC FQDN, data center media path, data center signaling path, event type, final SIP, final vendor subcode, final SIP phrase, unique customer support ID.

10. *Identity verification information:* Question, answer, and email address.

11. *Carpool and parking information:* Records related to membership in carpools with USPS employees or about individuals who otherwise regularly use USPS parking facilities, including name, space number, principal's and others' license numbers, home address, and contact information.

RECORD SOURCE CATEGORIES:

Employees; contractors; subject individuals; and other systems of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

1. Records about building access and issuance of accountable property are retrieved by name, Social Security Number, or Employee Identification Number.

2. Records about authorized access to computer and information resources are retrieved by name, logon ID, Employee Identification Number, or other unique identifier of the individual.

3. Report and tracking data created during web-based meetings and video conferences that pertain to individual participants, content shared, conference codes and other relevant session data and historical device usage data are retrieved by meeting ID, host name or host email address.

4. Records pertaining to web-based collaboration and communication applications are retrieved by organizer name and other associated personal identifiers.

5. Media recordings created during web-based meetings and video conferences are retrieved by meeting ID, host name or host email address.

6. Records of carpools and parking facilities are retrieved by name, ZIP Code, space number, or parking license number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Building access and accountable property records are retained until termination of access or accountability.

2. Records of computer access privileges are retained 1 year after all authorizations are cancelled.

3. Report and tracking data created during web-based meeting and video conferences, such as other relevant session data and historical device usage data, are retained for twenty-four months.

4. Records pertaining to web-based collaboration and communication applications are retained for twenty-four months.

5. Web-based meeting or video session recordings are retained for twenty-four months.

6. Records of carpool membership and use of USPS parking facilities are retained 6 years.

7. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Inquiries for records about building access, accountable property, carpool membership, and use of USPS parking facilities must be addressed to the facility head. Inquiries about computer access authorization records must be directed to the Manager, Corporate Information Security, 475 L'Enfant Plaza SW, Suite 2141, Washington, DC 20260. For Inspection Service computer access records, inquiries must be submitted to the Inspector in Charge, Information Technology Division, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201. Inquiries must include full name, Social Security Number or Employee Identification Number, and period of employment or residency at the location.

EXEMPTIONS PROMULGATED FROM THIS SYSTEM:

None.

HISTORY:

June 1, 2020, 85 FR 33210; April 11, 2014, 79 FR 20249; June 27, 2012, 77 FR 38342; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

SYSTEM NAME AND NUMBER:

USPS 890.000, Sales, Marketing, Events, and Publications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Headquarters Marketing and Public Policy; Integrated Business Solutions Services Centers; National Customer Service Center; Area and District USPS facilities; Post Offices; and contractor sites.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE(S) OF THE SYSTEM:

1. To understand the needs of customers and improve USPS sales and marketing efforts.

2. To provide appropriate materials and publications to customers.

3. To conduct registration for USPS and related events.

4. To enable access to the USPS meeting and video web conferencing application.

5. To enhance your online meeting experience by utilizing enhanced

features and functionality, including voluntary polling to gather responses from attendees to generate reports or the interactive chat feature.

6. To facilitate team collaboration and communication through information sharing and cross-functional participation.

7. To allow task allocation and tracking among team members.

8. To allow users to communicate by telephone and instant-messaging through web-based applications.

9. To provide users outside of the USPS limited collaboration and communication capabilities through guest account access.

10. To facilitate and support cybersecurity investigations of detected or reported information security incidents.

11. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who interact with USPS sales personnel, respond to direct marketing messages, request publications, respond to contests and surveys, and attend USPS events.

2. Customers and other individuals who participate in web-based meeting, video conference, collaboration, and communication applications sponsored by the USPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Customer and key contacts' names, mail and email addresses, phone, fax and pager numbers; job descriptions, titles, and roles; other names and emails provided by customers.

2. *Identifying information:* Customer ID(s), D–U–N–S Numbers, USPS account numbers, meter numbers, and signatures.

3. *Business specific information:* Firm name, size, and years in business; number of employees; sales and revenue information; business sites and locations; URLs; company age; industrial classification numbers; use of USPS and competitor's products and services; types of customers served; customer equipment and services; advertising agency and spending; names of USPS employees serving the firm; and calls made.

4. *Information specific to companies that act as suppliers to USPS:* Contract start and end dates, contract award number, contract value, products and/or services sold under contract.

5. *Information provided by customers as part of a survey or contest.*

6. *Payment information:* Credit and/or debit card number, type, expiration date, and check information; and ACH information.

7. *Event information:* Name of event; role at event; itinerary; and membership in a PCC.

8. *Customer preferences:* Preferences for badge name and accommodations.

9. *Participant session data from web-based meetings and web conferences:* Participant name, participant's webcam-generated image (including presenters), recorded participant audio, video, and shared meeting screen content, chat interaction, polling questions and associated responses, participant join time and leave time, meeting duration, participant location, and participant media hardware information.

10. *Event session data from web-based meetings and web conferences:* Event start time, event status, event organizer, event presenter, event producer, event production type, event recording setting, total number of event media viewings.

11. *Historical device usage data from web-based meetings and web conferences:* Device type (such as mobile, desktop, or tablet), Device Operating System, Number of users of related Operating Systems, Operating System Version, MAC address, and IP address.

12. *Historical application usage data from web-based meetings and web conferences:* Number of active users, number of active users in groups, number of active group communication channels, number of messages sent, number of calls participated in, last activity date of a user, and number of guest users in a group.

13. *Web-based Public Switched Telephone Network data records:* Phone number, time phone call started, user name, call type, phone number called to, phone number called from, called to location, called from location, telephone minutes used, telephone minutes available, charges for use of telephone services, currency of charged telephone services, call duration, call ID, conference ID, phone number type, blocked phone numbers, blocking action, reason for blocking action, blocked phone number display name, date and time of blocking.

14. *Web-based Direct Routing Public Switched Telephone Network records:* Call start time, user display name, SIP address, caller number, called to number, call type, call invite time, call failure time, call end time, call duration, number type, media bypass, SBC FQDN, data center media path, data center signaling path, event type, final SIP, final vendor subcode, final SIP phrase, unique customer support ID.

RECORD SOURCE CATEGORIES:

Customers, USPS personnel, and list providers.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

1. For sales, events, and publications, information is retrieved by customer name or customer ID(s), mail or email address, and phone number.

2. For direct marketing, information is retrieved by Standard Industry Code (SIC) or North American Industry Classification System (NAISC) number, and company name.

3. Report and tracking data created during web-based meetings and video conferences that pertain to individual participants, content shared, conference codes and other relevant session data and historical device usage data, are retrieved by meeting ID, host name or host email address.

4. Records pertaining to web-based collaboration and communication applications are retrieved by organizer name and other associated personal identifiers.

5. Media recordings created during web-based meetings and video conferences are retrieved by meeting ID, host name or host email address.

6. Web-based meeting and video session recordings are retrieved by meeting ID, host name or host email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records relating to organizations and publication mailing lists are retained until the customer ceases to participate.

2. ACH records are retained up to 2 years. Records relating to direct marketing, advertising, and promotions are retained 5 years.

3. Other records are retained 3 years after the relationship ends.

4. Report and tracking data created during web-based meeting and video conferences, such as session data and historical device usage data, are retained for twenty-four months.

5. Records pertaining to web-based collaboration and communication

applications are retained for twenty-four months.

6. Web-based meeting and video session recordings are retained for twenty-four months.

7. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmission is protected by encryption.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURE:

For information pertaining to sales, inquiries should be addressed to: Sales and Customer Relations 475 L'Enfant Plaza SW, Washington, DC 20260.

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Customer and Marketing Officer and Executive Vice President, and include their name and address.

EXEMPTIONS PROMULGATED FROM THIS SYSTEM:

None.

HISTORY:

June 1, 2020, 85 FR 33208; October 24, 2011, 76 FR 65756; April 29, 2005, 70 FR 22516.

Brittany Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–16956 Filed 8–3–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89424; File No. SR–CboeBYX–2020–021]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Introduce Periodic Auctions for the Trading of U.S. Equity Securities

July 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2020, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce periodic auctions for the trading of U.S. equity securities. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to introduce periodic auctions for the trading of U.S. equity securities (''Periodic Auctions'').[3] On October 17, 2019, the Commission issued a Statement on Market Structure Innovation for Thinly Traded Securities (''Statement'').[4] The Statement requested comment on potential innovations that could improve market quality in equity securities that trade in lower volume (''thinly-traded securities''), and sought further feedback on the regulatory changes that may be needed to facilitate such innovation. Cboe Global Markets, Inc. (''Cboe''), the Exchange's parent company, submitted a comment letter in response to the Statement on December 20, 2019.[5] As expressed in that comment letter, Cboe shares the Commission's interest in improving market quality in this segment of the U.S. equities market, and believes that the best way to accomplish this goal is through innovation and targeted approaches that invite investor choice.[6] At that time, Cboe suggested a handful of different approaches that national securities exchanges could take to improve market quality in thinly-traded securities, without requiring anti-competitive and ultimately harmful changes to U.S. equities market structure.[7] Following the submission of that comment letter, Cboe has continued to work on the design of potential market structure innovations that it could implement to improve market quality in thinly-traded securities, consistent with the Commission's request. As a result of those efforts, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Periodic Auction'' shall mean an auction conducted pursuant to Proposed Rule 11.25. *See* Proposed Rule 11.25(a)(4).

[4] *See* Securities Exchange Act Release No. 87327 (October 17, 2019), 84 FR 56956 (October 24, 2019) (File No. S7–18–19).

[5] *See* Letter from Adrian Griffiths, Assistant General Counsel, Cboe to Vanessa Countryman, Secretary, Commission dated December 20, 2019, *available at https://www.sec.gov/comments/s7-18-19/s71819-6574727-201085.pdf.*

[6] *Id.*

[7] *Id.*

Exchange is now proposing to implement Periodic Auctions.

As proposed, Periodic Auctions of one hundred milliseconds would be conducted throughout the course of the trading day when there are matching buy and sell Periodic Auction Orders, as defined below, that are available to trade in such an auction. Periodic Auctions would not interrupt trading in the continuous market, and would be price forming auctions that are executed at the price level that maximizes the total number of shares in both the auction book and the continuous market that are executed in the auction. While Periodic Auctions would be available in all securities traded on the Exchange, the Exchange believes that this trading mechanism would be particularly valuable for securities that trade in lower volume and consequently suffer from wider spreads and less liquidity displayed in the public markets. Cboe has been a global leader in the implementation of periodic auctions, and currently runs the largest periodic auction book for the trading of European equities. The proposed Periodic Auctions that the Exchange would implement are based on the model that Cboe offers to clients in Europe, with targeted changes to adapt this model for the U.S. equities market. The Exchange believes that its implementation of Periodic Auctions would enhance the ability for investors to source liquidity in both thinly-traded securities where liquidity is naturally more scarce, as well as in more actively traded securities, including where available liquidity may be diminished due to increased volatility or other market conditions. Today, U.S. equities market participants are largely limited to two significant liquidity events where orders are pooled and executed at a single point in time—*i.e.,* the opening and closing auctions. During the rest of the trading day, liquidity may be more limited, particularly for market participants that are seeking to trade larger orders. As proposed, Periodic Auctions would offer a new price forming auction that could be utilized by investors seeking liquidity, including block-size liquidity, during the course of the trading day. The Exchange believes that concentrating available liquidity in Periodic Auctions that would take place when the Exchange has received matching auctionable buy and sell orders would assist investors in obtaining needed liquidity, particularly in the case of investors seeking to execute larger orders that would be difficult to execute without market impact in the continuous market. In addition, since the proposed Periodic Auctions would be price forming, these auctions would perform a valuable price discovery function, which may be particularly helpful for investors when trading thinly-traded or other securities that typically trade with wider spreads.

I. Order Entry and Cancellation

The Exchange would offer Periodic Auction Only Orders and Periodic Auction Eligible Orders,[8] both of which indicate a member's desire to initiate a Periodic Auction, if possible, as well as Continuous Book Orders that would not initiate a Periodic Auction but would be eligible to participate in such an auction when it is executed.[9] Thus, as provided in Proposed Rule 11.25(b), Users may enter Periodic Auction Orders, *i.e.,* Periodic Auction Only Orders or Periodic Auction Eligible Orders,[10] that are eligible to initiate Periodic Auctions pursuant to Proposed Rule 11.25(c), as discussed later in this proposed rule change, and Continuous Book Orders that may participate in such Periodic Auctions if present on the Continuous Book at the time a Periodic Auction is executed. As explained in more detail below, the ability to choose between Periodic Auction Only Orders, Periodic Auction Eligible Orders, and Continuous Book Orders would allow members to control how their orders are handled in Periodic Auctions—*e.g.,* whether the order is able to initiate a Periodic Auction, or not, and whether the order participates on the Continuous Book, or not. The choice of different methods of participating in Periodic Auctions would therefore provide flexibility to members based on their individual business needs, or the needs of their customers. Regardless of the type of order submitted, orders entered on the Exchange that are present when a Periodic Auction is executed would generally be eligible to participate in that execution. The proposed introduction of Periodic Auctions would therefore benefit both Users explicitly seeking to use this functionality, as well as other Users that may benefit from any increased liquidity routed to the Exchange in order to participate in such Periodic Auctions.

General Requirements for Order Entry and Cancellation. Periodic Auction Orders and Continuous Book Orders may be modified and/or cancelled at any time, including during the Periodic Auction Period,[11] at the discretion of the User. Periodic Auctions are designed to allow seamless participation in a price forming auction process without impacting continuous trading, and market participants would therefore remain able to manage orders that they have entered to participate in such auctions during the course of the trading day. Since some Users may not wish to cancel Periodic Auction Orders inadvertently during the course of an ongoing Periodic Auction, however, the Exchange would provide an optional instruction that would allow such Users to instruct the Exchange not to cancel a Periodic Auction Order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.[12]

Given that Periodic Auctions are designed, in part, to facilitate the sourcing of larger blocks of liquidity that may not be available in continuous trading, the Exchange would also implement certain size restrictions that would be applicable to Periodic Auction Orders. Specifically, Periodic Auction Orders would have to be for a size of 100 shares or more in securities priced below $500 based on the consolidated last sale price, *i.e.,* the last sale price that is disseminated by the securities information processor, or if no consolidated last sale price is available, the previous day's closing price.[13] There would be no similar size restrictions for higher-priced securities, where such a

[8] A ''Periodic Auction Only Order'' is a Limit Order entered with an instruction to participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. A ''Periodic Auction Eligible Order'' is a Non-Displayed Limit Order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to Proposed Rule 11.25. *See* Proposed Rule 11.25(b)(1)–(2).

[9] The term ''Continuous Book Order'' shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term ''Continuous Book'' shall mean System's electronic file of such Continuous Book Orders. *See* Proposed Rule 11.25(a)(2).

[10] The term ''Periodic Auction Order'' shall mean a ''Periodic Auction Only Order'' or ''Periodic Auction Eligible Order'' as those terms are defined in Proposed Rules 11.25(b)(1)–(2), and the term ''Periodic Auction Book'' shall mean the System's electronic file of such Periodic Auction Orders.. *See* Proposed Rule 11.25(a)(6).

[11] The term ''Periodic Auction Period'' would be defined in Proposed Rule 11.25(a)(8) as the fixed time period of 100 milliseconds for conducting a Periodic Auction.

[12] The Periodic Auction Book Price is an indicative price that is designed to provide information about the price where a Periodic Auction may ultimately be executed. *See* infra note 28. The instruction to ''lock-in'' a Periodic Auction Order would be included as a port setting that a User can use to flag any orders entered through a particular port. Users that wish to use this feature must use the port setting and would not be able to flag individual orders on an order-by-order basis.

[13] Periodic Auction Only Orders that do not meet applicable size requirements would be rejected. Periodic Auction Eligible Orders would be handled as Continuous Book Orders, and would be eligible to trade on the Continuous Book based on User instructions.

size requirement would require a higher notional value to participate in a Periodic Auction.

Periodic Auction Only Orders. A ''Periodic Auction Only Order'' would be defined in proposed Rule 11.25(b)(1) as a Limit Order entered with an instruction to participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. The Periodic Auction Only Order is designed for market participants that want to access liquidity that is available in one or more Periodic Auctions and do not wish to participate in the continuous market. As such, a Periodic Auction Only Order would not be eligible for execution on the Continuous Book. Instead, such orders would remain on the Periodic Auction Book for participation in Periodic Auctions until executed or cancelled.

Periodic Auction Only Orders would only be accepted with a time-in-force of Regular Hours Only (''RHO'') or immediate-or-cancel (''IOC''). Specifically, Periodic Auction Only Orders entered outside of Regular Trading Hours must include a time-in-force of Regular Hours Only (''RHO'') as the Exchange would conduct Periodic Auctions only during Regular Trading Hours,[14] and not during the Early Trading,[15] Pre-Opening,[16] or After Hours Trading Sessions.[17] Periodic Auction Only Orders entered during Regular Trading Hours may be either RHO or immediate-or-cancel (''IOC''). If entered with a time-in-force of IOC, the order must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. As previously discussed, with the inclusion of this instruction, an order that initiates a Periodic Auction would be considered ''locked-in'' and would not be cancellable by the entering User during the course of an ongoing Periodic Auction Period unless it is not marketable at the Periodic Auction Book Price. An IOC order entered with this instruction would therefore be able to immediately initiate a Periodic Auction on entry. And, if it does so, it would not be cancelled for the duration of the Periodic Auction Period, except in circumstances where the Periodic Auction Book Price indicates that the order might not be executable, thereby ensuring that Periodic Auction Only Orders entered with these attributes would ordinarily be eligible to participate in Periodic Auctions that they initiate.

The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that are seeking to execute larger orders that they may not be willing expose for trading on the Continuous Book. Thus, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders. The Exchange offers Minimum Quantity Orders to Users that trade on the Continuous Book today.[18] The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Orders used for trading on the Continuous Book but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to similar restrictions.

In addition, the Exchange believes that some Users may wish to use Periodic Auctions to seek liquidity at or better than a pegged price that is based on the applicable national best bid and offer (''NBBO''). The Exchange would therefore allow a User to optionally include an instruction on its Periodic Auction Only Orders to peg such orders to either the midpoint of the NBBO (''midpoint peg''), or the same side of the NBBO (''primary peg''). Similar to pegging instructions offered for Continuous Book Orders today,[19] Periodic Auction Only Orders entered with a primary peg instruction could be pegged to the NBB or NBO, or a certain amount above the NBB or below the NBO (''offset'').[20] The inclusion of a pegging instruction for Periodic Auction Only Orders would ensure that Users have the opportunity to specify that these orders are only executed at prices defined in relation to the market for the particular security, including midpoint executions that offer price improvement compared to the applicable NBBO.

Periodic Auction Eligible Orders. A ''Periodic Auction Eligible Order'' would be defined in Proposed Rule 11.25(b)(2) as a Non-Displayed Limit Order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to Proposed Rule 11.25. The Periodic Auction Eligible Order would allow market participants to trade in the continuous market during the course of the trading day, with the ability to also initiate Periodic Auctions when there is contra-side liquidity available to trade. The Exchange notes that there may be situations where an incoming Periodic Auction Eligible Order would be able to either initiate a Periodic Auction, or alternatively trade immediately with one or more orders resting on the Continuous Book. Since Periodic Auction Eligible Orders are geared towards participation in Periodic Auctions, with attendant price discovery benefits and potential price improvement opportunities, an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction would initiate a Periodic Auction. For similar reasons, Periodic Auction Eligible Orders would not trade on the Continuous Book during a Periodic Auction Period in the security. Although the Exchange would not halt or otherwise suspend trading on the Continuous Book while conducting a Periodic Auction, the Exchange believes that Periodic Auction Eligible Orders that are designed for use in Periodic Auctions should preference trading in such auctions over trading on the Continuous Book.

The time-in-force included on a Periodic Auction Eligible Order would also need to allow the order to be entered and remain on the Periodic Auction Book during the course of a Periodic Auction. As a result, there would be certain limitations on the entry of Periodic Auction Eligible Orders with a time-in-IOC or fill-or-kill (''FOK''). An IOC order is defined in BYX Rule 11.9(b)(1) as a limit order that is to be executed in whole or in part as soon as such order is received. Thus, under the ordinary terms of an IOC order, if such an order were to initiate a Periodic Auction, it would generally not be available for later execution at

[14] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BYX Rule 1.5(w).

[15] The term ''Early Trading Session'' means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. *See* BYX Rule 1.5(ee).

[16] The term ''Pre-Opening Session'' means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* BYX Rule 1.5(r).

[17] The term ''After Hours Trading Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* BYX Rule 1.5(c).

[18] *See* BYX Rule 11.9(c)(5).

[19] *See* BYX Rule 11.9(c)(8)(A).

[20] Since Periodic Auctions are restricted from trading outside of the applicable Protected NBBO, the offset included on such orders would have to result in the order being more aggressive than the NBBO—*i.e.,* priced higher for buy orders or lower for sell orders.

the end of any Periodic Auction Period. To ensure that IOC orders that initiate a Periodic Auction are eligible to participate in the auction's eventual execution, the Exchange therefore proposes that Periodic Auction Eligible Orders entered with a time-in-force of IOC must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. Such Periodic Auction Eligible Orders would be handled in a manner consistent with that described above with respect to Periodic Auction Only Orders. Similarly, an FOK order is defined in BYX Rule 11.9(b)(6) as a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. The Exchange is not proposing to support the use of FOK orders in Periodic Auctions, and therefore Periodic Auction Eligible Orders would not be able to be entered with a time-in-force of FOK.[21]

As previously explained, the Exchange believes that Users seeking liquidity in Periodic Auctions may wish to use such auctions to receive an execution at prices at or better than the midpoint of the NBBO. The Exchange currently offers functionality that allows members entering Mid-Point Peg Orders on the Continuous Book to forgo an execution in situations where the NBBO is locked.[22] However, in order to avoid a Periodic Auction from being initiated that may not ultimately result in an execution during a locked market, Mid-Point Peg Orders that are entered with an instruction to not execute when the NBBO is locked would not be eligible to be entered as Periodic Auction Eligible Orders.[23] This handling would mirror the handling of Periodic Auction Orders, which as proposed could be entered with a midpoint peg instruction, but would not include any further instructions that would allow the User to elect not to trade during a locked market.

Since the Exchange believes that Periodic Auctions may be beneficial to market participants trading larger orders that they may not want to be executed unless a specified minimum size can be satisfied, the Exchange would also allow for Minimum Quantity Orders to be entered as Periodic Auction Eligible Orders. As previously discussed, the Exchange currently offers two variants of this order type. By default, a Minimum Quantity Order would execute upon entry against a single order or multiple aggregated orders simultaneously. Alternatively, such orders may be entered with an instruction that the order not trade with multiple aggregated orders simultaneously, and that the minimum quantity condition instead be satisfied by each individual order resting on the Continuous Book. As proposed, Minimum Quantity Orders, as defined in Rule 11.9(c)(5), may be entered as Periodic Auction Eligible Orders only if the order includes the default instruction that allows the minimum size specified to be executed against one or more contra-side orders—*i.e.,* similar to the proposed handling of Periodic Auction Only Orders entered with a minimum execution quantity instruction. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be eligible to be entered as Periodic Auction Eligible Orders. As discussed later in this proposed rule change, similar restrictions would also apply to Continuous Book Orders, which would not participate in Periodic Auctions if entered with this alternative instruction.

Finally, similar to the opening process used to begin trading in a security pursuant to BYX Rule 11.23: (1) Discretionary Orders, as defined in rule 11.9(c)(10), would be eligible to participate only up to their ranked price for buy orders or down to their ranked price for sell orders; [24] and (2) all Pegged Orders and Mid-Point Peg Orders, as defined in BYX Rule 11.9(c)(8) and (9), would be eligible for execution in Periodic Auctions based on their pegged prices. The Exchange believes that this proposed handling is equally relevant to Periodic Auctions, and would ensure, where appropriate, that the order handling experienced in such Periodic Auctions is familiar to members and investors.

Continuous Book Orders. A ''Continuous Book Order'' would be defined in Proposed Rule 11.25(a)(2) as an order on the BYX Book that is not a Periodic Auction Order. Continuous Book Orders, which may participate in the eventual execution of a Periodic Auction but would not be able to initiate such an auction, would be handled in the same manner as Periodic Auction Eligible Orders solely with respect to handling of (1) Discretionary Orders, and (2) Pegged Orders and Mid-Point Peg Orders, each as discussed in the preceding paragraph. Continuous Book Orders would also be subject to the handling discussed for Periodic Auction Eligible Orders entered as Minimum Quantity Orders, with the caveat that this handling would only apply to Continuous Book Orders entered with the default instruction that permits the execution of such orders against one or more contra-side orders. As proposed, similar to the treatment of Periodic Auction Orders—including both Periodic Auction Only Orders and Periodic Auction Eligible Orders—Continuous Book Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be included in Periodic Auctions. However, rather than prohibiting Users from entering Minimum Quantity Orders with this instruction on the Continuous Book, where this instruction may still be valuable for investors, the Exchange would simply prohibit any orders entered with that instruction from participating in the execution of any Periodic Auctions. Finally, Continuous Book Orders that are entered as Reserve Orders, as defined in Rule 11.9(c)(1), would be eligible to participate in Periodic Auctions to the full extent of their displayed size and Reserve Quantity.[25]

II. Initiation and Publication of Periodic Auction Information

The Exchange would conduct Periodic Auctions during Regular Trading Hours to give market participants an opportunity to obtain liquidity during the course of the trading day. Instead of initiating such auctions on a set schedule, the Exchange would wait until it has executable interest that is eligible to initiate a Periodic Auction, thereby ensuring that Periodic Auctions are only performed when it may be possible for interested market participants to obtain an execution at the end of the Periodic Auction Period. Specifically, as provided in Proposed Rule 11.25(c), a Periodic Auction would be initiated in

[21] Although the Exchange is not proposing any special handling for IOC or FOK orders that are entered as Continuous Book Orders, the Exchange notes that such orders would not participate in Periodic Auctions as they would never be posted to the Continuous Book.

[22] *See* BYX Rule 11.9(c)(9).

[23] This restriction would not apply to Continuous Book Orders. Since Continuous Book Orders do not initiate Periodic Auctions, a Continuous Book Order entered with these instructions would be able to participate in the eventual execution of Periodic Auctions if such execution can take place in accordance with the terms of the order.

[24] The discretionary range of such orders would not be considered in Periodic Auctions.

[25] There are no similar requirements applicable to Periodic Auction Eligible Orders since Reserve Orders include a displayed portion and therefore would not be eligible for entry as Periodic Auction Eligible Orders. As discussed, Periodic Auction Eligible Orders, as defined, would include only Non-Displayed Limit Orders.

a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to Proposed Rule 11.25. This would begin a Periodic Auction Period of 100 milliseconds where the Exchange would match buy and sell orders for potential execution.[26]

Once the Periodic Auction Period has begun, the Exchange would consolidate any additional Periodic Auction Orders that it receives, which would be used to calculate the information disseminated at a randomized time thereafter in a Periodic Auction Message.[27] Specifically, at a randomized time in one millisecond intervals after a Periodic Auction has been initiated and before the end of the Periodic Auction, the Exchange would disseminate via electronic means a Periodic Auction Message that includes two important pieces of information about the Periodic Auction: (1) The Periodic Auction Book Price,[28] and (2) and the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price. With these two pieces of information, market participants would be informed of both the price at which Periodic Auction Orders would match based on current market conditions, and the number of shares of such orders that would be matched. The calculation of the Periodic Auction Book Price would exclude Continuous Book Orders. Although Continuous Book Orders are eligible to trade in a Periodic Auction at the end of the Periodic Auction Period, they are potentially subject to execution on the Continuous Book prior to the execution of the Periodic Auction. As a result, similar to certain information disseminated by other national securities exchanges in advance of their auctions,[29] Continuous Book Orders would not be used to calculate the data elements included in the Periodic Auction Message. After its initial dissemination, a revised Periodic Auction Message would be disseminated in one millisecond intervals for the remaining duration of the auction, thereby ensuring that market participants maintain a current view of the market with which to make appropriate trading decisions throughout the Periodic Auction Period.

III. Determination of Periodic Auction Price

Periodic Auctions are designed to facilitate meaningful price discovery in securities traded on the Exchange throughout the course of the trading day. Similar to the operation of opening and closing auctions in securities listed on the Exchange's affiliate, Cboe BZX Exchange, Inc. (''BZX''),[30] as well as similar auctions conducted on other national securities exchanges, Periodic Auctions would therefore be executed at a price that maximizes the number of shares traded in the auction within designated auction collars (''Collar Price Range'').[31] Specifically, as provided in Proposed Rule 11.25(d), the Periodic Auction Price would be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Periodic Auction Book in the Periodic Auction.[32]

The Exchange would also implement certain ''tie-breakers'' that would be used to determine the applicable Periodic Auction Price if multiple price levels would satisfy the requirement to maximize the number of shares executed in the auction. These tie-breakers would be the same as the tie-breakers currently used for opening and closing auctions on BZX for that exchange's listed securities. Specifically, in the event of a volume-based tie at multiple price levels, the Periodic Auction Price would be the price that results in the minimum total imbalance—*i.e.,* the price at which the number of any executable shares to buy or sell that do not participate in the Periodic Auction is minimized.[33] In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Price would be the price closest to the Volume Based Tie Breaker, which would be defined in Proposed Rule 11.25(a)(9) as the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO.[34]

IV. Determination of Collar Price Range

As discussed, the Periodic Auction Price would be constrained by auction collars that are designed to ensure that the execution of a Periodic Auction takes place at a price that is reasonably related to the market for the security. While Periodic Auctions are designed to balance supply and demand through a competitive auction process, the Collar Price Range would restrict trading from occurring at prices that are far away from the market. Specifically, as proposed, the term ''Collar Price Range'' would be defined in Proposed Rule 11.25(a)(1) as the more restrictive of the Midpoint Collar Price Range and the Protected NBBO.[35] The Collar Price

[26] One relevant exception to this would be for Periodic Auctions that would otherwise end after the Regular Trading Session. As previously discussed, Periodic Auctions would only be conducted during Regular Trading Hours. As a result, such Periodic Auctions would be performed at the end of the Regular Trading Session.

[27] The ''Periodic Auction Message'' would be defined in Proposed Rule 11.25(a)(7) as a message disseminated by electronic means that includes information about any matched Periodic Auction Orders on the Periodic Auction Book, as described in Rule 11.25(c).

[28] The ''Periodic Auction Book Price'' would be defined in Proposed Rule 11.25(a)(5) as the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tie at multiple price levels, the Periodic Auction Book Price would be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price would be the price closest to the Volume Based Tie Breaker. As calculated, the Periodic Auction Book Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price.

[29] For example, the ''Current Reference Price'' disseminated ahead of Nasdaq's closing cross is defined as the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired, subject to certain tie-breakers. *See* Nasdaq Rule 4754(a)(7)(A). Nasdaq does not include ''Close Eligible Interest'' entered on its continuous book in determining the Current Reference Price pursuant to Nasdaq Rule 4754(a)(7)(A), nor does it include such orders in its dissemination of the number of shares represented by MOC, LOC, and IO orders that are paired at the Current Reference Price. *See* Nasdaq Rule 4754(a)(7)(B).

[30] *See* BZX Rule 11.23(b)(2)(B); (c)(2)(B).

[31] The term ''Collar Price Range'' shall mean the more restrictive of the Midpoint Collar Price Range, as defined in Proposed Rule 11.25(a)(1), and the Protected NBBO. *See* Proposed Rule 11.25(a)(1). Notwithstanding the foregoing, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the Limit Up-Limit Down Plan, the Collar Price Range will be capped at such Price Bands. *Id.*

[32] The calculation of Collar Price Range, as defined in the Proposed Rule, is described in more detail in Section IV of this proposed rule change. As calculated, the Periodic Auction Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Price.

[33] Selecting a price that would minimize the imbalance best reflects the value of the security based on the auction's price discovery process because it is the price level where the amount of buy and sell interest is closest to equal.

[34] As is the case on the Exchange's affiliate, BZX, for opening and closing auctions for BZX-listed securities, a NBBO would be considered a Valid NBBO where: (i) There is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO as determined by the Exchange and published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto. *See* BZX Rule 11.23(b)(23). Where the NBBO is not a Valid NBBO, the consolidated last sale price would be used. *Id.*

[35] The term ''Midpoint Collar Price Range'' shall mean the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the auction, as described below. *See* Proposed Rule 11.25(a)(3). The ''Protected NBBO'' is the national best bid or offer that is a Protected Quotation. *See* BYX Rule 1.5(s).

Range would be similar to the auction collars used today for BZX's opening and closing processes, with important differences to account for the fact that Periodic Auctions would be subject to the requirements of the Rule 611 of Regulation NMS (''Order Protection Rule'') and the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down'' or ''LULD'' Plan).

Specifically, Periodic Auctions would be subject to a Collar Price Range that is the more restrictive of the Midpoint Collar Price Range (described below) and the Protected NBBO. This implementation would therefore ensure that such Periodic Auctions are executed at a price that is consistent with the requirements of the Order Protection Rule as well as the additional protections provided by auction collars that are similar to those currently used by the Exchanges' affiliate, BZX, for opening and closing auctions in that exchange's listed securities. For all Periodic Auctions, the Exchange would calculate a Midpoint Collar Price Range to establish an upper and lower bound for the execution of such auctions. The Midpoint Collar Price Range would mirror the collars currently established for use in BZX auctions, and would be defined in Proposed Rule 11.25(a)(3) as the range from a set percentage below the Collar Midpoint to above the Collar Midpoint,[36] such set percentage being dependent on the value of the Collar Midpoint at the time of the auction. Specifically, the Collar Price Range would be determined as follows: (1) Where the Collar Midpoint is $25.00 or less, the Collar Price Range would be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; (2) where the Collar Midpoint is greater than $25.00 but less than or equal to $50.00, the Collar Price Range would be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and (3) where the Collar Midpoint is greater than $50.00, the Collar Price Range would be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint. Finally, all Periodic Auctions would be conducted during Regular Trading Hours and therefore would be subject to the requirements of the LULD Plan. Generally, the LULD Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands. Consistent with the requirements of the LULD Plan, the Exchange would not execute Periodic Auctions at a price that is outside of the applicable Price Bands. Thus, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the LULD Plan, the Collar Price Range would be capped at such Price Bands.

V. Priority and Execution of Orders

As discussed, Periodic Auction Orders and Continuous Book Orders that are executable at the end of the Periodic Auction Period would be executed at the Periodic Auction Price determined pursuant to Proposed Rule 11.25(d). Such orders would be executed in accordance with Proposed Rule 11.25(e), which describes the allocation model for Periodic Auctions. Generally, the allocation model described in this rule is intended to encourage active participation of Periodic Auction Orders, including participation of larger orders, while ensuring that Continuous Book Orders are also able to participate in resulting executions, as appropriate, in order to encourage continued liquidity on the Continuous Book. First, any displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed in price/time priority, thereby encouraging the continued submission of displayed orders. Second, after any displayed Continuous Book Orders have been executed, the Exchange would execute any Periodic Auction Orders that are executable at the Periodic Auction Price. Since Periodic Auctions are designed, in part, to facilitate the execution of larger orders, such Periodic Auction Orders would be executed in size/time priority, beginning with the largest order. Finally, any non-displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed pursuant the normal price-time priority allocation used for the execution of orders on the Continuous Book, as provided in BYX Rule 11.9(a)(2)(B). All Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic Auction.

VI. Regulatory and Other Considerations

The Exchange would also adopt rule language in the Interpretations and Policies to the proposed rule that describes how Periodic Auctions would be processed consistent with certain other regulatory obligations, including obligations related to member conduct, or otherwise to ensure transparent handling in certain specified circumstances. These rules would provide additional clarity and transparency to members and investors with respect to how the Exchange would process Periodic Auctions consistent with relevant obligations under the Exchange Act, or as otherwise necessary or appropriate to maintain a fair and orderly market on the Exchange.

First, as explained in Interpretations and Policies .01 to Proposed Rule 11.25, the Exchange would not conduct Periodic Auctions during a trading halt when such trading is prohibited. If a symbol is halted prior to the execution of a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), the Periodic Auction would be immediately cancelled without execution, consistent with applicable limitations on trading during a halt.

Second, as explained in Interpretations and Policies .02 to Proposed Rule 11.25, a Periodic Auction would not be initiated during a Crossed Market. If the market becomes crossed during a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), and remains crossed at the end of the Periodic Auction Period, the Periodic Auction would be cancelled without execution.[37] If the market subsequently becomes uncrossed, resting Periodic Auction Orders may trigger a Periodic Auction pursuant to Rule 11.25(c).

Third, Interpretations and Policies .03 to Proposed Rule 11.25 would detail the proposed handling of orders consistent with Regulation SHO. As proposed, all short sale orders designated for participation in the Periodic Auction would have to be identified as ''short'' or ''short exempt'' pursuant to Rule 11.10(a)(5). Rules 201(b)(1)(i) and (ii) of Regulation SHO generally requires that trading centers such as the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to: (i) Prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price; and (ii) impose this price restriction for the remainder of the day and the following

[36] The Collar Midpoint would be the Volume Based Tie Breaker for all Periodic Auctions. As discussed later in this proposed rule change, the Volume Based Tie Breaker would generally be the midpoint of the NBBO, except where there is no Valid NBBO.

[37] The Exchange would not immediately cancel the auction as crossed markets are typically short-lived and the market may no longer be crossed at the end of the Periodic Auction Period, in which case the Exchange could successfully execute the auction.

day. So as to maintain compliance with Rule 201 of Regulation SHO, the Exchange would only execute short sale orders (*i.e.,* those not marked short exempt) if the execution would take place at a permissible price pursuant to Regulation SHO. Specifically, if a security is in a short sale circuit breaker, orders marked short will only trade in a Periodic Auction if the Periodic Auction Price determined pursuant to Rule 11.25(d) is above the national best bid.[38]

Finally, Interpretations and Policies .04 to Proposed Rule 11.25 would describe member conduct obligations with respect to the entry of Periodic Auction Orders. As proposed, Periodic Auction Orders must be entered with the intent to participate in Periodic Auctions. A pattern or practice of submitting orders for the purpose of disrupting or manipulating Periodic Auctions, including entering and immediately cancelling Periodic Auction Orders, would be deemed conduct inconsistent with just and equitable principles of trade. The Exchange would conduct surveillance to ensure that Users do not inappropriately enter Periodic Auction Orders for impermissible purposes, such as to gain information about other Periodic Auction Orders that are resting on the Periodic Auction Book, or otherwise disrupting or manipulating Periodic Auctions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[39] in general, and Section 6(b)(5) of the Act,[40] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would facilitate improved price formation and provide additional execution opportunities for investors, particularly in thinly-traded or other securities that may suffer from limited liquidity.

As mentioned in the purpose section of this proposed rule change, the Exchange believes that its proposed introduction of Periodic Auctions is responsive to the Statement that the Commission issued in October 2019 to address market quality concerns in thinly-traded securities.[41] Specifically, the Periodic Auction proposal is designed to improve liquidity and price formation in such thinly-traded securities, while also allowing the Exchange to better compete with off-exchange venues that currently offer features that investors may find beneficial for sourcing liquidity when displayed liquidity in the public markets is more scarce. Cboe offered its thoughts in response to the Statement in a comment letter submitted to the Commission on December 20, 2019. As stated in that comment letter, Cboe believes that innovation by national securities exchanges, rather than potentially harmful regulatory changes that favor a limited segment of the market, is what is ultimately needed to facilitate better market quality in thinly-traded securities. The Exchange believes that Periodic Auctions, as designed, are such an innovation.

Periodic Auctions would supplement existing opening and closing auctions by consolidating buy and sell interest in a price forming auction when investors seek liquidity during the course of the trading day. Although liquidity is frequently available in size around the open and close of trading, liquidity may be more limited intraday. Thus, investors looking to trade in size may have issues getting their orders filled during the trading day, or may receive inferior execution quality due to the market impact of trading larger blocks of equity securities in a market with limited liquidity. As proposed, Periodic Auctions would allow the Exchange to consolidate volume from market participants, thereby increasing the liquidity available to investors. By creating a deeper pool of liquidity for the intraday execution of orders, including block-sized liquidity, the Exchange believes that members and investors would be able to secure better quality executions. In addition, Periodic Auctions would perform an important price discovery function, which the Exchange believes may be particularly valuable in thinly-traded securities that often trade with significantly wider spreads that negatively impact the ability for investors to ascertain market value.[42] The proposed introduction of Periodic Auctions would therefore contribute to a fair and orderly market in equity securities traded on the Exchange.

The Exchange's affiliate, Cboe Europe, has had a successful history with periodic auctions in the European equities market, and the proposed introduction of Periodic Auctions for the trading of U.S. equity securities is based, in part, on the successful implementation of a similar product offered by Cboe Europe. As illustrated in Chart A, Cboe Europe's periodic auction book has grown to about 2%–2.5% of notional value traded on European equities exchanges since its introduction in October 2015. Indeed, such periodic auctions now account for an average daily value traded (''ADVT'') of about €1 billion, with two months in Q1 2020 actually exceeding this threshold, reflecting the value that this offering has provided to market participants that trade European equities.

Chart A: Average Daily Value Traded in Cboe Europe Periodic Auctions

[38] This restriction would not apply to orders marked short exempt, which are exempted from these restrictions pursuant to Rule 201(b)(1)(iii)(B) of Regulation SHO. Rule 201(b)(1)(iii)(B) of Regulation SHO provides that the policies and procedures required by the rule must be reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a price that is less than or equal to the current national best bid.

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *See* supra note 4.

[42] *See* Letter from Adrian Griffiths, supra note 5, which illustrates the wider spreads that often impact trading in thinly-traded securities. The Exchange believes that Periodic Auctions would improve price discovery in securities that tend to trade with wider spreads. As explained in that letter, volume in thinly-traded securities often migrates to off-exchange venues where market participants can trade without publicly displaying their orders and while potentially minimizing market impact.

Chart A: Average Daily Value Traded in Cboe Europe Periodic Auctions

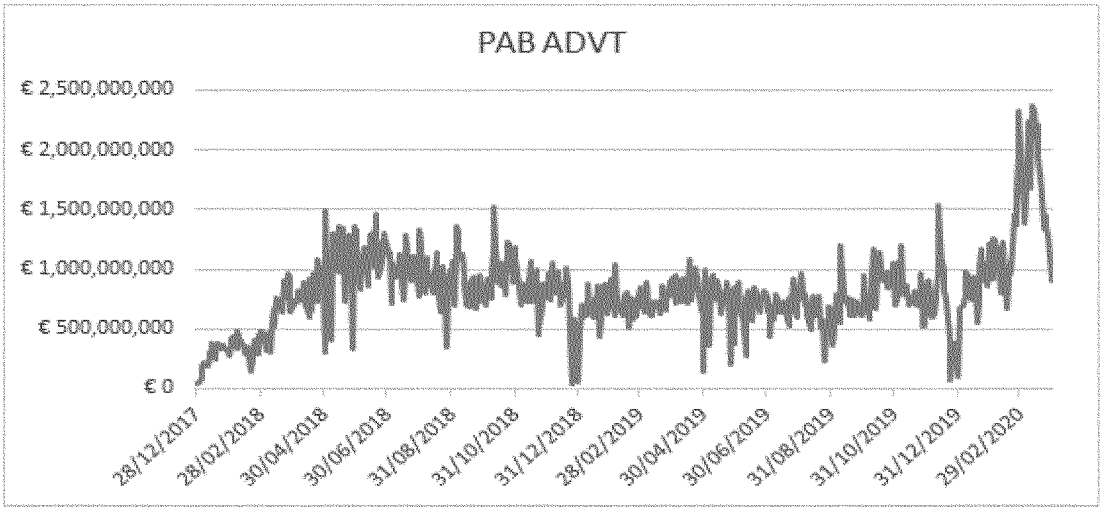

CHART B—CBOE EUROPE PERIODIC AUCTION STATISTICS

Month	Periodic auction value traded		Periodic auction market share % notional value traded on exchanges in EU
	Total monthly	Average daily	
Jan–20	€19,266,389,823	€875,883,628	2.42
Feb–20	€24,377,313,487	€1,218,865,674	2.52
Mar–20	€36,933,642,050	€1,678,801,911	2.46
Apr–20	€18,370,457,305	€918,522,865	2.33
May–20	€15,993,488,255	€761,594,679	2.13
Jun–20	€18,221,339,811	€828,242,719	1.91

This growth in Cboe Europe's periodic auction offering has promoted price improvement opportunities, with an analysis of periodic auctions conducted by Cboe Europe for Q1 2020 showing such periodic auctions trading about 85% of value traded at the midpoint. Although the Exchange recognizes that there are important differences in market structure between the U.S. and European equities markets, as well as relevant design differences between the two products, the Exchange believes that U.S. investors may receive similar benefits from its proposed introduction of Periodic Auctions. Moreover, the Exchange believes that such innovation should take preference over other regulatory approaches that may impede future innovation. As discussed in detail in the paragraphs that follow, Periodic Auctions are designed to improve the investor experience for market participants that trade U.S. equities, and the Exchange believes that this product may therefore contribute to a free and open market and national market system.

The Exchange believes that it is consistent with the protection of investors and the public interest to introduce Periodic Auction Only Orders and Periodic Auction Eligible Orders to facilitate trading in the Periodic Auctions. Use of these order types would be voluntary, and market participants would be able to determine whether and how to participate in Periodic Auctions using these order types. Specifically, while both forms of Periodic Auction Orders would be eligible to initiate Periodic Auctions, Periodic Auction Only Orders would allow firms to indicate that they are seeking liquidity solely in Periodic Auctions, while Periodic Auction Eligible Orders would allow firms to also seek liquidity on the Continuous Book before and after the execution of a Periodic Auction. The Exchange believes that it is appropriate to offer these two methods of initiating Periodic Auctions so that market participants can decide whether to use Periodic Auctions as the sole means of sourcing liquidity, or as an additional means of accessing liquidity if an order entered onto the Continuous Book has not been executed.

Periodic Auction Only Orders would provide a means for Users to indicate that they solely wish to have their order executed in a Periodic Auction. Since Periodic Auctions would only take place during the Regular Trading Session, Periodic Auction Only Orders would be accepted with a time-in-force of RHO (either during or outside of Regular Trading Hours), or IOC (solely during Regular Trading Hours). If entered with a time-in-force of IOC, a Periodic Auction Only Order would also have to be entered with an instruction to ''lock-in'' the order to avoid situations where a Periodic Auction Only Order initiates an auction and then is immediately cancelled prior to the execution of that auction. Periodic Auction Only Orders are not eligible to trade on the Continuous Book and therefore must include instructions that would allow the order to be executed in a Periodic Auction. The requirement to ''lock-in'' the order during the course of a Periodic Auction if the order is marketable at the Periodic Auction Book

Price is designed to allow a User to specify that they are only interested in participating in a Periodic Auction if they can do so immediately, while ensuring that they are actually eligible to participate in the execution of that auction, if possible. Without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available. The Exchange believes that the proposed requirements would benefit Users that are looking for a speedy execution in Periodic Auctions, while also ensuring that Periodic Auction Only Orders entered with a time-in-force of IOC can trade at the end of the Periodic Auction Period.

The Exchange would also allow Users to include certain specified instructions on their Periodic Auction Only Orders. Specifically, such orders would be accepted with minimum execution quantity and pegging instructions. The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that have larger orders to be executed in Periodic Auctions that they may not be willing expose for trading in the continuous market. As illustrated in Cboe's commenter letter in response to the Commission's statement on thinly-traded securities,[43] liquidity is often more limited in these securities, and as such market participants often look to off-exchange venues that may be able to meet their liquidity needs without displaying orders in the public market, thereby limiting the market impact of their trading activity. The Exchange believes that market participants that are looking for liquidity in size may find Periodic Auctions to be a valuable means of sourcing needing liquidity without the potential risks of displaying their orders for execution.

Given the potential benefits to larger orders, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders.[44] The Exchange offers a Minimum Quantity Order on the Continuous Book today. The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Order but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to a similar restriction.

In addition, in light of the fact that market participants often value midpoint executions, or may wish to receive executions at other prices based on the applicable national best bid or offer (''NBBO''), the Exchange would also allow Users to enter a pegging instruction for such orders. Periodic Auction Only Orders would therefore accommodate instructions that the order is to be pegged to either the midpoint or same side of the market. As is the case for orders entered for trading on the Continuous Book, Periodic Auction Only Orders entered with a primary peg instruction would be pegged to the NBBO, with or without an offset, provided that only aggressive offsets would be permitted given the fact that Periodic Auctions would be restricted to trading within the Protected NBBO and would not be eligible to trade at inferior prices. Although the Exchange would not generally offer special order handling instructions for Periodic Auction Only Orders, the Exchange believes that midpoint and primary peg instructions, as described, would allow Users to more accurately capture their trading intent, and may therefore promote more active use of Periodic Auctions as a means of sourcing liquidity for such orders.

With respect to Periodic Auction Eligible Orders, the Exchange would allow Users to include an instruction on non-displayed orders entered to trade on the Continuous Book that would allow such orders to initiate a Periodic Auction if executable against contra-side Periodic Auction Orders. The Exchange would not allow Users to enter displayed orders as Periodic Auction Eligible Orders as such Periodic Auction Eligible Orders would not be available for execution during an ongoing Periodic Auction. As a result, displayed orders, which are disseminated to the market and subject to firm quote requirements under Rule 602(b)(2) of Regulation NMS,[45] would not be able to be entered as Periodic Auction Eligible Orders. However, such displayed orders could still participate in Periodic Auctions as Continuous Book Orders, and would receive execution priority when executed in that manner.

As discussed in the purpose section of the proposed rule change, the time-in-force included on a Periodic Auction Eligible Order would need to allow the order to remain executable during the course of a Periodic Auction. The Exchange has therefore proposed to: (1) Only allow IOC orders to be entered as Periodic Auction Eligible Orders if such orders include an instruction not to cancel the order during a Periodic Auction Period; and (2) disallow FOK orders from being entered as Periodic Auction Orders. The Exchange believes that both of these requirements are consistent with just and equitable principles of trade as they are designed to ensure that a Periodic Auction Eligible Order, which as discussed would be eligible for the initiation of a Periodic Auction, would not be prevented from participating in the eventual execution of such Periodic Auction due to a time-in-force that contemplates the order either being executed or cancelled immediately on entry. As discussed with respect to Periodic Auction Only Orders, without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available. Nevertheless, the Exchange believes that some Users may find it valuable to enter IOC orders as Periodic Auction Eligible Orders. Although such Users may be looking for a speedy execution, and would therefore generally prefer an execution on entry, or not at all, they may be willing to wait 100 milliseconds for a potential execution in a Periodic Auction, instead of having the order cancelled immediately. The Exchange would therefore allow Users to signal their intent to trade in this manner by

[43] *See* Letter from Adrian Griffiths, supra note 5.

[44] The Exchange notes that in rare circumstances, the inclusion of a minimum execution quantity on one or more Periodic Auction Orders and/or Continuous Book Orders may result in the Exchange being unable to process a Periodic Auction in a timely manner. To prevent potential capacity and/or performance issues that may impact both the execution of the auction, as well as trading on Continuous Book, in such an event the Exchange would cancel the auction after a specified number of attempts.

[45] *See* 17 CFR 242.602(b)(2).

entering the IOC order with an instruction that it should not be cancelled during a Periodic Auction. If entered in this manner, a Periodic Auction Eligible Order may trade immediately on entry on the Continuous Book, or may alternatively participate in a Periodic Auction, subject to cancellation no later than the end of any Periodic Auction Period. The Exchange does not anticipate the same use case for FOK orders, which contain an additional condition that requires the order to be executable in full, and would therefore restrict their ability to be entered as Periodic Auction Eligible Orders.

The Exchange would also not accept Mid-Point Peg Orders entered as Periodic Auction Eligible Orders if the Mid-Point Peg Order is entered with an instruction to not execute when the NBBO is locked. If the Exchange permitted Mid-Point Peg Orders with this instruction to be entered as Periodic Auction Eligible Orders, those orders could initiate a Periodic Auction but would not be available for the auction's eventual execution if the market subsequently becomes locked at that time. The Exchange believes that the proposed handling is consistent with just and equitable principles of trade as the Exchange wishes to avoid the potential for such orders to initiate a Periodic Auction that may ultimately not execute due to the inclusion of this condition. Periodic Auction Eligible Orders are designed to initiate Periodic Auctions and may encourage other Users to enter orders that could participate in the auction's execution. As a result, the Exchange believes that such orders should reflect trading interest that does not include unnecessary conditions. Users that wish to use Mid-Point Peg Orders with this instruction would still be eligible to participate in Periodic Auctions as Continuous Book Orders, which are able to participate in the eventual execution of a Periodic Auction, but would not initiate such auctions.

Similar to the proposed handling of Periodic Auction Only Orders, the Exchange would allow Periodic Auction Eligible Orders to be entered as Minimum Quantity Orders, but would only permit such orders to be entered with the default handling of that instruction. That is, Minimum Quantity Orders entered as Periodic Auction Eligible Orders would execute only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders. Although the Exchange does offer an alternative instruction that permits the User to request that the Exchange only execute the order against a single contra-side order, such handling is designed primarily for use on the Continuous Book, and would complicate the execution of Periodic Auctions.[46] For similar reasons, Minimum Quantity Orders are excluded from the Exchange's opening process for securities traded pursuant to unlisted trading privileges. However, as discussed, the Exchange believes that Users participating in Periodic Auctions may value the ability to specify a minimum quantity, and the Exchange has therefore proposed to allow such functionality for Periodic Auction Eligible Orders so long as the User is willing for those orders to be executed against one or more contra-side orders. The Exchange believes that this strikes the right balance between allowing Users to ensure that they only trade in a Periodic Auction if their minimum quantity criteria can be met, while excluding instructions that could unnecessarily complicate the execution of Periodic Auctions.

In addition, the Exchange would specify handling for Discretionary Orders, Pegged Orders, and Mid-Point Pegged Orders that are entered as Periodic Auction Eligible Orders. Including this information in the rule would increase transparency around the operation of the Exchange and ensure that Users are properly informed about how orders with these instructions would be handled in Periodic Auctions. The same handling is currently applied to the Exchange's opening process for securities traded pursuant to unlisted trading privileges, and treating these orders in the same manner for purposes of Periodic Auctions would ensure a consistent and familiar experience for market participants that enter such orders on the Exchange. The Exchange therefore believes that these proposed rules are consistent the maintenance of a fair and orderly market.

The Exchange also believes that it is consistent with just and equitable principles of trade to allow Continuous Book Orders, *i.e.,* orders that are not entered as either Periodic Auction Only Orders or Periodic Auction Eligible Orders, to participate in any Periodic Auction that results in an execution. Although Continuous Book Orders would not initiate a Periodic Auction, such orders would be eligible to participate in the resulting execution, thereby facilitating additional liquidity for those orders without disrupting their ability to trade normally during the course of the auction. Continuous Book Orders would remain on the Continuous Book and subject to potential execution during a Periodic Auction Period, but would be included in the final determination of the Periodic Auction Price, and participate in any resulting execution. Although the Exchange believes that a number of Users may wish to use Periodic Auction Orders that are specifically designed for participation in Periodic Auctions and have the ability to initiate those auctions, the Exchange also believes that Periodic Auctions would be valuable to Users that wish primarily to trade on the Continuous Book but may be able to secure an execution in a Periodic Auction if possible. As a result, Continuous Book Orders would generally be eligible to trade in Periodic Auctions at the end of the auction process.

Such Continuous Book Orders would be subject to similar handling to Periodic Auction Eligible Orders that may also trade on the Continuous Book in addition to Periodic Auctions, including the same handling discussed above with respect to Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders. The Exchange believes that this handling is consistent with just and equitable principles of trade as it would ensure consistent treatment of similar orders traded in Periodic Auctions. In addition, Continuous Book Orders that are entered as Minimum Quantity Orders would be subject to similar but not identical handling to Periodic Auction Eligible Orders. Given the value of Minimum Quantity Orders that include the alternative instruction that allows a User to specify that the minimum size specified be satisfied by each individual contra-side order, Users would continue to be able to use this instruction for trading on the Continuous Book. However, such orders, which would not be permitted to be entered as Periodic Auction Orders, would similarly not be able to participate in Periodic Auctions as Continuous Book Orders. Users that wish to include a minimum quantity on their orders could participate in Periodic Auctions as either Periodic Auction Only Orders, Periodic Auction Eligible Orders, or Continuous Book Orders, provided that for each of these order types, the order must be willing to trade against one or more contra-side orders. As discussed, the Exchange believes that this treatment is necessary in order to offer a minimum quantity instruction in an auction that pools interest and executes such interest at a single price.

The Exchange also believes that the proposed handling of Continuous Book

[46] *See* BYX Rule 11.23(a)(2).

Orders entered as Reserve Orders is consistent with the maintenance of a fair and orderly market as it will ensure a familiar and consistent experience for market participants that trade on the Exchange. Although Periodic Auction Eligible Orders must be non-displayed and therefore cannot be entered as a Reserve Order that, by rule, includes both a displayed portion and non-displayed portion, the proposed handling for Continuous Book Orders is the same as the handling applied to the Exchange's opening process securities traded pursuant to unlisted trading privileges. Thus, similar to the treatment of Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders, detailing the proposed handling of Reserve Orders would both increase operational transparency and ensure consistent and familiar treatment of similar orders on the Exchange.

Periodic Auctions would be initiated throughout Regular Trading Hours when Periodic Auction Orders entered by Users are executable against each other, thereby ensuring that the initiation of an auction is tied to demonstrated interest from both buyers and sellers in the security. Once the Exchange has matched two or more Periodic Auction Orders in this manner, a Periodic Auction Period of 100 milliseconds would begin to allow orders from additional market participants to participate in the execution of the Periodic Auction. To facilitate the pooling of Periodic Auction Orders during this period, the Exchange would publish information about the auction, including (1) an indicative Periodic Auction Book Price that reflects price at which the Periodic Auction could be executed, counting only Periodic Auction Orders and excluding Continuous Book Orders that may be subject to execution prior to the end of the Periodic Auction Period; and (2) the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price. This information would be published beginning at a randomized time in one millisecond intervals, and would be refreshed in one millisecond intervals thereafter as additional orders are entered or cancelled, or other changes to market conditions are made that could impact the Periodic Auction Book Price. The Exchange believes that it is consistent with the protection of investors and the public interest to publish this information as it may inform potential trading in periodic auctions and encourage additional order flow to be entered to participate in such auctions. The Exchange also believes that sending out the initial dissemination at a randomized time after Periodic Auction Orders have been matched would facilitate the operation of a fair and orderly market. This handling would allow additional Periodic Auction Orders received during this interim period to be pooled in the initial dissemination of auction information. In addition, since market participants would not know how much time is left in the Periodic Auction Period, firms would be incentivized to respond quickly with Periodic Auction Orders to participate in the Periodic Auction, rather than potentially waiting until the end of the auction, which may reduce the value of the information proposed to be disseminated to investors and may impact price discovery.

Once the 100 millisecond Periodic Auction Period has ended, the Exchange would calculate the execution price of the auction, *i.e.,* the Periodic Auction Price, and execute Periodic Auction Orders and Continuous Book Orders that are eligible to trade at that price. The Exchange believes that the proposed methodology for determining the Periodic Auction Price is consistent with just and equitable principles of trade. Generally, the proposed methodology for calculating the Periodic Auction Price is designed to allow Periodic Auctions to facilitate price discovery while maintaining important investor protections and assuring compliance with applicable regulations. Given the important price formation function of these auctions, the Exchange would use logic for pricing Periodic Auctions that largely mirrors the logic used by its affiliate, BZX, for opening and closing auctions in that exchange's listed securities.

Specifically, the Exchange would seek to execute Periodic Auctions at a price that maximizes the number of shares that can trade in the auction, subject to specified price collars that would limit executions at prices that are not reasonably related to the price of the security established by the market. The applicable price collars would also be based on the auction collars used for BZX opening and closing auctions, except that trading would be further limited by applicable LULD Price Bands and the Protected NBBO, as required pursuant to applicable regulatory requirements.[47] Finally, the price calculation would be subject to tie-breakers that are consistent with those used for BZX opening and closing auctions in situations where there is a volume-based tie at multiple price levels. These tie-breakers would help ensure the selection of a meaningful Periodic Auction Price by selecting the price that would minimize the potential imbalance between supply and demand, and then favoring prices closer to a Volume Based Tie Breaker that is generally the midpoint of the NBBO. In sum, the proposed calculation of the Periodic Auction Price would allow the Exchange to appropriately balance supply and demand in Periodic Auctions and facilitate robust price formation similar to opening and closing auctions.

After the Exchange determines the Periodic Auction Price, any Periodic Auction Orders or Continuous Book Orders that are eligible for execution at that price would be executed based on a special allocation methodology designed for use in Periodic Auctions. First, in order to continue to incentivize the entry of displayed orders on the Exchange, Continuous Book Orders that are displayed on the Continuous Book would be executed first in price/time priority. Although the Exchange is proposing to introduce Periodic Auctions to incentivize additional liquidity, the Exchange believes that it is important to continue to encourage the entry of displayed orders on the Continuous Book. Displayed orders entered in the public market contribute to price formation, and are used as a reference price for the execution of orders on other venues. As a result, the Exchange's proposal to introduce Periodic Auctions is designed to continue to encourage the entry of displayed orders that would both trade on the Continuous Book and simultaneously benefit from priority when executed in a Periodic Auction.

Second, after Continuous Book Orders displayed on the Continuous Book have been executed, Periodic Auction Orders would be executed in size/time priority. As previously noted, the Exchange believes that Periodic Auctions may be valuable for investors that are seeking liquidity in size. As a result, the priority methodology employed by the Exchange for Periodic Auction Orders would preference larger orders, which the Exchange believes may contribute to greater depth in Periodic Auctions. In turn, the liquidity provided by these larger orders would contribute to the execution of smaller orders that may

[47] As discussed in the purpose section of this proposed rule change, both the requirements of the LULD Plan and the Order Protection Rule apply to transactions executed during Regular Trading Hours. Although opening and closing auctions are generally exempt from these requirements, there are currently no exemptions that would apply to Periodic Auctions that perform a similar role in facilitating price discovery.

also participate in Periodic Auctions, thereby facilitating the execution of all orders, both large and small, that seek liquidity in such auctions, and furthering execution opportunities for investors that trade on the Exchange.

Finally, non-displayed Continuous Book Orders would be executed last in priority. Unlike displayed orders entered on the Continuous Book, or Periodic Auction Orders that contribute to important pricing information disseminated to market participants during the course of a Periodic Auction, non-displayed orders entered on the Continuous Book do not contribute to pre-execution price formation.[48] As a result, while these orders would be eligible to trade in Periodic Auctions, where they may benefit from additional execution opportunities, they would be subject to the lowest priority among Periodic Auction Orders and Continuous Book Orders. In addition, since these orders are not specifically seeking liquidity in Periodic Auctions, and would participate in Periodic Auctions solely as an additional source of liquidity, priority within this band would be determined based on the normal execution priority afforded to such orders on the Continuous Book. The Exchange believes that this approach is consistent with just and equitable principles of trade as it would ensure that non-displayed Continuous Book Orders receive the priority that they would normally be afforded for executions on the Continuous Book.

Similar to the Exchange's opening process for securities traded pursuant to unlisted trading privileges,[49] all Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic Auction. The Exchange's Match Trade Prevention modifiers are designed to allow Users to better manage order flow and prevent certain undesirable executions on the Continuous Book. However, this functionality would complicate the execution of Periodic Auctions, where orders are pooled together and executed at a price that balances supply and demand in the auction. As a result, the Exchange believes that ignoring Match Trade Prevention modifiers in Periodic Auctions, similar to the handling currently used by the Exchange for its opening process, is consistent with the maintenance of a fair and orderly market in securities traded in such Periodic Auctions.

In addition, the Exchange believes that the proposed language being codified in the Interpretations and Policies to the proposed rule is consistent with the Exchange Act and the rules and regulations adopted thereunder. As proposed, these rules would include language that identifies how Periodic Auctions would be conducted during a crossed market, and consistent with applicable regulatory requirements related to handling of trading halts and Regulation SHO. Such rules would also describe appropriate standards of member conduct, consistent with the Exchange's obligations under the Act to regulate and surveil its market. The proposed rules included in Interpretations and Policies .01–.03 would ensure that: (1) Periodic Auctions do not take place when their execution may be complicated by the existence of a crossed market that could interfere with the auction's price discovery function, or when such execution would not be permissible due to a trading halt in a security; [50] and (2) the execution in Periodic Auctions of any short sale orders that are not marked ''short exempt'' would only take place at a permissible price when the security is in a short sale circuit breaker pursuant to Rule 201 of Regulation SHO. Further, the proposed rules included in Interpretations and Policies .04 would provide additional guidance to Users with respect to conduct that would be considered inconsistent with just and equitable principles of trade. The Exchange intends to conduct appropriate surveillance of its members to ensure that their participation in Periodic Auctions is done in a manner that is consistent with such rules. As a result, these rules would ensure that orders Periodic Auctions would be processed in a manner that is consistent with applicable regulatory obligations and the maintenance of a fair and orderly market in securities traded on the Exchange.

In conclusion, the Exchange believes that the proposed rule change would enhance the experience of investors looking to access liquidity in the public market and fill an important role in the U.S. equities market where liquidity may be more limited outside of the open and close of trading. By introducing a price forming auction for the aggregation and execution of buy and sell orders intraday, Periodic Auctions would increase execution opportunities available to investors. In turn, Periodic Auctions may improve trading outcomes for market participants that have trouble sourcing liquidity in the public markets today, including in thinly-traded securities where liquidity is often limited and trading often occurs on a number of off-exchange venues that can offer reduced market impact. As such, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is designed to increase competition by introducing an additional mechanism for equities market participants to seek liquidity during the course of the trading day. Indeed, the proposed introduction of Periodic Auctions is a pro-competitive means of addressing the concerns that the Commission expressed in its Statement on thinly-traded securities. The proposal, which seeks to introduce innovative functionality on a non-primary listing exchange, would allow competition, rather than regulatory intervention designed to limit competition (*e.g.,* through the suspension or termination of unlisted trading privileges), to improve market quality in thinly-traded and other securities.

The introduction of Periodic Auctions is designed to improve execution quality for investors sourcing liquidity during the trading day, and, in particular, those that are looking to trade in size, or are looking to access liquidity in thinly-traded or other securities where liquidity may be more scarce. Providing an additional mechanism for price forming orders to be executed would promote competition between venues that seek to execute this order flow, and provide market participants and investors with greater choice with respect to how they choose to source liquidity. The equities industry is fiercely competitive as the Exchange must compete with other equities exchanges and off-exchange venues for order flow. The proposal is both evidence of this competition, and would further enable the Exchange to compete effectively in this market.

[48] Non-displayed orders would contribute to price formation at the end of a Periodic Auction as they would be considered in the determination of the Periodic Auction Price.

[49] *See* BYX Rule 11.23(b).

[50] Although Rule 611(b)(4) of Regulation NMS provides an exception from the trade-through requirements of that rule for situations where a protected bid is crossed with a protected offer, the Exchange believes that market participants may not desire an execution in a Periodic Auction during periods when the market is crossed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received 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–CboeBYX–2020–021 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–CboeBYX–2020–021. 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–CboeBYX–2020–021, and should be submitted on or before August 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16876 Filed 8–3–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89422; File No. SR–BOX–2020–29]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Amend Section IX.C (Trading Floor Participant Fees) and Remove Section IX.D (Trading Floor Booth Space Fee)

July 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2020, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

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 modify the Fee Schedule for trading on BOX to amend Section IX.C. (Trading Floor Permit Fees). The Exchange launched the BOX Trading Floor in August 2017 and established the current Trading Floor Permit Fees in conjunction with the launch.[5] In February, the Exchange relocated the BOX Trading Floor to a larger trading facility to accommodate increased interest in the Trading Floor. Then, as a precautionary measure to prevent the potential spread of COVID–19, the Exchange temporarily closed the Trading Floor on March 20, 2020. The Trading Floor reopened on Monday, May 4th, 2020 with social distancing precautions and guidelines in place that have impacted the space availability for Floor Participants. To encourage efficient use of space, BOX believes it is appropriate to amend the Floor Broker Trading Floor Permit Fees to assess fees based on the space utilized by each firm rather than the number of registered

[51] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 81504 (August 30, 2017), 82 FR 42195 (September 6, 2017) (SR–BOX–2017–28).

permits that each Participant has on the Trading Floor. The Exchange is also proposing to remove or modify certain terminology in the Trading Floor Permit Fees section to clarify how these fees are assessed, and better reflect how space on the Trading Floor is used by each Participant.

First, the Exchange proposes to rename Section IX.C. (Trading Floor Permit Fees) to Trading Floor Participant Fees.[6] The Exchange believes that this will clarify that the fees in this section are assessed on the Participant firms and not the registered permit holders that are employed at each firm. The Exchange then proposes to change the language both subsections (a) and (b) from Participant to ''firm'' to clarify that these fees are assessed on each firm registered to conduct trading on the BOX Trading Floor; rather than the registered trading permit holders approved to trade on behalf of these Participants.

The Exchange then proposes to modify the language in this section to clarify how space on the Trading Floor is used. The two types of Floor Participant firms—Floor Brokers and Floor Market Makers—have different business needs and preferences on the Trading Floor. Floor Broker firms utilize space adjacent to the Crowd Area (''booth space'') akin to private office space where employees of the same firm communicate with customers, receive orders, and coordinate covering the Trading Floor to announce such orders into the Crowd Area.[7] A Floor Broker firm has at least one desk, and may combine multiple, contiguous desks into a single booth space adjacent to the Crowd Area. By contrast, Floor Market Making firms operate at the point of sale, which necessitates that their floor space be integrated in the Crowd Area.

Floor Market Makers

The Exchange first proposes to replace the reference to ''booth space'' with ''podium'' to more accurately reflect the type of space used by the Floor Market Making firms on the BOX Trading Floor. The Exchange notes that this terminology change will not impact the space currently used by Floor Market Makers; rather it is designed to clarify the differences in how space is used by Floor Market Makers compared to the manner in which space is used by Floor Brokers. A podium is the term used within the industry for the Floor Market Maker work space located in the middle of the Crowd Area, while a booth space is the terminology used for the work space adjacent to the Crowd Area where the Floor Broker firms are located. The Exchange notes that all Market Maker podiums on the BOX Trading Floor are the same size.

The Exchange currently charges each Floor Market Making firm $5,500 per month for one booth space and three registered permits on the BOX Trading Floor. Along with replacing the term ''booth space'' with ''podium,'' the Exchange proposes to remove the references to three registered permits as the Exchange will no longer assess fees based on the number of registered permits on the Floor. Instead, the Exchange proposes to add language that states the firm will be entitled to an unlimited amount of registered trading permits. Registered trading permits are given to persons employed by or associated with a Floor Broker or Floor Market Maker who are eligible to effect transactions on the Trading Floor as a Floor Market Maker or Floor Broker.[8] The Exchange notes that under the proposal a Market Maker will now be able to register an unlimited amount of trading permits for access to the BOX Trading Floor. Each podium will continue to be limited to one registered trading permit holder actively trading at any given time, as is currently the case.

Finally, the Exchange proposes to add language to charge Floor Market Makers who wish to have any additional podiums in the Crowd Area $1,500 per podium per month. The Exchange notes that this is the same fee currently assessed on Floor Market Makers who wish to have additional space on the Trading Floor, under current Section IX.D. (Trading Floor Booth Space Fee) which the Exchange plans to remove under this proposal. A Market Maker may elect to have more than one podium to increase their trading opportunities on the BOX Trading Floor. As stated above, a Market Maker podium is limited to one registered trading permit holder actively trading at any given time. Therefore, if the Market Maker would like to have two registered trading permit holders actively trading at any given time, they are required to have two podiums on the BOX Trading Floor.

The Exchange believes that the changes proposed above will have no impact to Floor Marker Maker fees. Each Floor Market Maker currently has one podium on the BOX Trading Floor, and would continue to be charged $5,500 per month for their space. Instead, the proposal now permits an unlimited number of trading permit holders although each podium will continue to accommodate only one trading permit holder at any given time.

Floor Brokers

The Exchange currently charges each Floor Broker firm $500 per month for three registered permits[9] and one booth space on the Trading Floor. The Exchange proposes to remove the references to three registered permits as the Exchange will no longer assess fees based on the number of registered trading permits on the Floor. Instead, the Exchange proposes to add language that states the firm will be entitled to an unlimited amount of registered trading permits. The Exchange notes that under the proposal a Floor Broker will now be able to register an unlimited amount of trading permits for access to the BOX Trading Floor; however each desk will be limited to one registered trading permit holder actively trading at any given time.[10]

The Exchange then proposes to establish a flat Floor Broker Trading Floor Participant Fee of $5,000 per month as well as a $5,000 Trading Floor Credit that will be applied if a Floor Broker firm executes a trade on 50% or more of trading days in a given month. For example, for June 2020, in order to avail themselves of the Trading Floor Credit, a Floor Broker must execute a trade on the BOX Trading Floor on at least 11 days of June (22 trading days in June 2020). The Exchange believes this fee/credit structure will encourage Floor Broker firms to more actively participate on the BOX Trading Floor as well as encourage the efficient use of Floor Space. The Exchange believes that most, if not all, of the current Floor Brokers will easily meet this threshold based on trading activity for the six weeks prior to the closure of the BOX Trading Floor on March 20, 2020 and therefore will

[6] The Exchange notes that the Trading Floor Participants apply in addition to the Participant Fees outlined in Section IX. A (Initiation Fee) and B (Participant Fees).

[7] *See* BOX Rule 100(a)(67). The term ''Trading Floor'' or ''Options Floor'' means the physical trading floor of the Exchange located in Chicago. The Trading Floor shall consist of one ''Crowd Area'' or ''Pit'' where all option classes will be located. The Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. A Floor Broker must open outcry an order in the Crowd Area.

[8] Registered Trading Permit holders are not assessed a Badge Fee. Badge Fees are assessed on persons employed by or associated with a Participant that are not registered to effect transaction on the BOX Trading Floor (see BOX Rule 7630).

[9] *Id.*

[10] The Exchange notes that prior to the closure of the Floor in March 2020, Floor Brokers were allowed more than one registered trading permit holder at each desk. However; since reopening the Trading Floor in May 2020 Floor Brokers have been limited to one registered trading permit holder per desk.

only be charged for the space that each Floor Broker utilizes on the Trading Floor under the proposed Desk Fee as described below.

Finally, the Exchange proposes to establish a $350 per month desk fee for Floor Brokers within their booth space, as well as specify that a Floor Broker must have at least one desk. Depending on their business model a Floor Broker may opt to have only one desk in its booth space, or opt for a larger footprint on the Floor and combine several desks into the booth space adjacent to the Crowd Area. The Exchange believes charging per desk will offer flexibility to Floor Broker firms to customize the precise amount of floor space needed, while ensuring that Floor Brokers are charged equitably for the floor space they utilize.

The Exchange believes these proposed changes will result in Floor Brokers being charged appropriately for their space on the BOX Trading Floor. Prior to the closure of the BOX Floor in March 2020, Floor Brokers had from one to six permit holders actively trading in their booth space on the BOX Floor at any given time. Under the current fee structure, a Floor Broker firm with one active trading permit holder occupying a booth space on the BOX Trading Floor was charged $500 per month, a Floor Broker firm with four active trading permit holders was charged $1000 per month, and a Floor Broker firm with six active trading permit holders was charged $1000 per month. Under the proposed fee structure, assuming that none of the Floor Brokers change their practices, these same Floor Brokers would be charged between $350 and $2,100 per month.

Specifically, a Floor Broker firm with one active trading permit holder occupying one desk would now be charged a Trading Floor Participant Fee of $5,000 per month (with the opportunity to earn a $5,000 per month Trading Floor Credit for a net Trading Floor Participant Fee of $0.00) and $350 per month Desk Fee. Therefore the firm's monthly anticipated Trading Floor Participant Fee would drop from $500 per month to $350 per month (assuming they qualify for the Trading Floor Credit).

The Floor Broker with four active trading permit holders would be charged $1000 per month under the current fee schedule ($500 for the first three registered trading permits and an additional $500 for the one registered trading permit). Under the proposed changes that same Floor Broker firm would be charged a Trading Floor Participant Fee of $5,000 per month with the opportunity to earn a $5,000 per month Trading Floor Credit, as well $1,400 per month for the four desks the Floor Broker occupies within its booth space. Therefore the firm's monthly anticipated Trading Floor Participant Fee would rise from $1000 per month to $1400 per month (assuming they qualify for the Trading Floor Credit).

In comparison, the Floor Broker firm with the largest presence would be charged $1000 per month for its six active trading permit holders ($500 for the first three registered trading permits and an additional $500 for the additional three registered trading permits). Under the proposed changes that same Floor Broker firm would be charged a Trading Floor Participant Fee of $5,000 per month with the opportunity to earn a $5,000 per month Trading Floor Credit, as well $2,100 per month for the six desks the Floor Broker occupies within its booth space. This firm would see the largest increase in its Trading Floor Participant Fees, which would rise from $1,000 per month to $2,100 per month.

Lastly, the Exchange proposes to delete Section IX.D, Trading Floor Booth Space Fee. With the changes proposed above that will charge Participants based on space utilization, the Exchange believes that a separate Trading Floor Booth Space Fee is no longer appropriate.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

First, the Exchange believes the proposal to remove or modify certain terminology in the Section IX.C. of the BOX Fee Schedule (Trading Floor Participant Fees) is reasonable, equitable and not unfairly discriminatory. The changes proposed are meant to clarify how these fees are assessed and better reflect how space on the Trading Floor is used by each Participant; which will alleviate potential confusion and result in a Fee Schedule that is clearer and easier to follow, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The Exchange also believes the proposed changes are reasonable as they do not impact the fees assessed on Trading Floor Participants.

The Exchange believes that the proposed changes to the Floor Market Maker Participant Fees are reasonable, equitable and not unfairly discriminatory. As stated above, the changes proposed will have no impact to Floor Market Maker fees. Instead, the proposed change to include one podium—instead of one booth space—in the Floor Market Maker Trading Floor Participant Fee is reasonable and appropriate as it better reflects the Floor Market Maker's use of space on the BOX Trading Floor. Further, the change to remove references to three registered permits is reasonable as the Floor Market Makers will continue to be limited to one active registered trading permit on each podium at any given time. Finally, the Exchange believes the proposed additional podium fee of $1,500 per month is reasonable as the Exchange previously assessed a $1,500 per month Trading Floor Booth Space Fee.[12] The proposed changes to the Floor Market Maker Participant Fees are equitable and not unfairly discriminatory as they apply equally to all Floor Market Makers on the BOX Trading Floor.

The Exchange believes the proposed changes to the Floor Broker Participant Fees are reasonable, equitable and not unfairly discriminatory. The purpose of these changes is to structure Floor Broker Participant fees so that these firms are charged for the space they utilize and are incentivized to use their space efficiently. Floor Brokers utilize their booth space, which could be comprised of one desk or multiple desks, as private office space, out of which they communicate with customers, take orders, and coordinate covering the Trading Floor to announce such orders into the Crowd Area. Thus, the Exchange believes the proposed changes to how it will charge Floor Brokers for space utilized is reasonable and equitable because it is designed to

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] The Exchange notes that this is in line with a similar fee charged at another exchange with a physical trading floor. *See* Cboe Exchange Inc. (''Cboe'') Fee Schedule. Cboe charges a $1,250 per month fee for a Non-Standard Booth Rental plus $1.70 per square foot, determined based on the size of the booth. At Cboe, the term ''non-standard booth'' generally refers to space on the trading floor on the Exchange that is set off from a trading crowd, which may be rented for whatever support, office, back-office, or any other business-related activities for which Cboe members may choose to use. The Exchange notes that the ''non-standard booth'' at Cboe is similar to the proposed Trading Floor Booth discussed herein, as the additional podium is a general space on the trading floor. *See* Securities Exchange Release No. 78741 (August 31, 2017), 81 FR 61727 (SR–CBOE–2016–063).

reflect the differing business needs of each Floor Broker while offering the firm some flexibility in setting up their booth space consistent with their particular business models/commercial preferences.

Next, the Exchange believes the proposed change to increase the Floor Broker Trading Floor Participant Fee from $500 to $5,000 is reasonable and appropriate as the proposed fee is comparable to other Floor Broker Participant Fees at another exchange with a trading floor.[13] Further, the Exchange notes that the purpose of this change, coupled with the Floor Broker Trading Floor Credit discussed above, is to incentivize Floor Participants to actively trade on the BOX Trading Floor and ensure the efficient use of space on the BOX Trading Floor. The Exchange believes that most, if not all, of the current Floor Brokers will easily meet this threshold based on previous trading activity and thus have a net Floor Broker Trading Floor Participant Fee of $0.00 in addition to any applicable desk fee. BOX believes that increasing the Floor Broker Trading Floor Participant Fee, coupled with the Floor Broker Trading Floor Credit—which may offset the Floor Broker Trading Floor Participant Fee entirely (notwithstanding any applicable desk fees)—will incentivize Floor Participants to actively trade on the BOX Trading Floor, and further, makes certain that BOX resources are not spent supporting a firm who is not actively trading on the BOX Trading Floor but is taking up valuable space. The Exchange believes that the proposed increase is equitable and not unfairly discriminatory because it applies to all Floor Brokers on the BOX Trading Floor.

The Exchange believes that the proposed Floor Broker Trading Floor Credit is reasonable, equitable, and not unfairly discriminatory. Floor Brokers play a critical role in bringing liquidity to the BOX Trading Floor by acting as an agent on behalf of their retail and institutional customers. As discussed above, the purpose of the credit is to incentivize Floor Brokers to actively trade on the Exchange for a certain number of days in a given month which in turn maximizes the efficient use of space on the BOX Trading Floor. Orders brought to the Trading Floor by Floor Brokers benefit all Floor Participants by providing more trading opportunities, which attracts Market Makers, Customers and other market participants. An increase in activity, in turn, facilities tighter spreads, which may result in corresponding increase in order flow from all market participants. The Exchange notes that another exchange offers Floor Brokers a rebate on their Floor Broker Permit Fee.[14] The Exchange believes that the proposed change is equitable and not unfairly discriminatory as all Floor Brokers on the BOX Trading Floor are eligible to receive the Floor Broker Trading Floor Credit. Further, the Exchange believes it is equitable and not unfairly discriminatory to offer a Trading Floor Credit to Floor Brokers and not Floor Market Makers. As discussed above, Floor Brokers act as the agent on behalf of their retail and institutional customers to bring order flow to the BOX Trading Floor. Floor Market Makers then benefit from the access they have to interact with orders which are made available in open outcry on the Trading Floor. Further, in order to obtain the Trading Floor Credit, Floor Brokers must actively trade on 50% or more of the trading days in a given month.

The Exchange recognizes the value that Floor Brokers bring to the Trading Floor elsewhere in its Fee Schedule. For example, the Exchange has in place certain fee caps and rebates to the benefit of Floor Brokers, in order to incentivize Floor Brokers to continue bringing their customer order flow to the Floor.[15] As such, the Exchange believes that offering Floor Brokers the potential to earn a credit to offset their Trading Floor Participant Fee is reasonable and appropriate.

The Exchange believes the proposed Floor Broker Desk Fee is reasonable and appropriate as similar fees are assessed at other exchanges with physical trading floors.[16] Further, the Exchange believes that the proposed Floor Broker Desk Fee more equitably allocates fees on the BOX Trading Floor. Prior to the COVID–19 social distancing precautions and guidelines that impacted the space availability on the Floor, Floor Brokers were assessed fees based on the number of registered trading permits on the BOX Floor. With the current space constraints the Exchange believes it is more equitable to instead assess fees on the space utilized by each Floor Broker. Under the proposed structure a Floor Broker firm utilizing only one desk would be charged less than a Floor Broker firm utilizing three desks. The Floor Broker Desk Fee is also intended to fairly allocate costs related to providing Floor Brokers the space necessary to conduct business on the BOX Trading Floor. Finally, the Exchange believes the proposed Floor Broker Desk Fee is equitable and not unfairly discriminatory as such fee will be applied to all Floor Brokers.

Lastly, the Exchange believes the proposed change to delete references to Trading Floor Booth Space Fee is reasonable and appropriate. With the changes proposed above that will charge Participants based on space utilization, this section is no longer necessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition because the proposed changes adjust the Trading Floor Permit Fees to instead assess fees based on the space utilized by both Floor Market Makers and Floor Brokers. The Exchange believes that the proposed fees will encourage fair and efficient use of the BOX Trading Floor.

[13] *See* Nasdaq Phlx Fee Schedule. On Phlx, Floor Brokers are assessed a $4,000 per month flat fee.

[14] On Cboe, Floor Broker Trading Permit Fees will be eligible for rebates based on the average customer (''C'') open-outcry contracts executed per day (''ADV'') over the course of a calendar month in all underlying symbols. The tiered rebates on Cboe are as follows: 0 to 99,999 ADV is 0% reduced from the Permit Fee; 100,000 to 174,999 is 15% reduced from the Permit Fee; and greater than 174,999 is 25% reduced from the Permit Fee. For example, on Cboe, a Floor Broker with 1 permit pays a $7,500 monthly Permit Fee. If that Floor Broker executes more than 174,999 ADV in a given month, the Floor Broker Permit Fee will be discounted by 25%. In total, that Floor Broker would be charged $5,625 ($7,500 − ($7,500 × 0.25)) for the Floor Broker Trading Permit. BOX is not proposing a volume based rebate. Under this proposal, BOX is simply seeking for a Floor Broker to execute a trade on 50% of the calendar days in a given month.

[15] Specifically, the Exchange currently offers Floor Brokers fee caps on manual transaction fees of $75,000 per month; QOO Order Rebates of $0.075 and $0.05 exclusively for Floor Brokers depending on the type of order executed on the Trading Floor; and finally the Strategy QOO Order Fee Cap and Rebate which allows Floor Brokers the opportunity to receive a $500 rebate for presenting certain Strategy QOO Orders to the Trading Floor.

[16] The Phlx assessed a similar fee to the one proposed. In 2011, Phlx charged a flat $300 per month fee for Trading/Administrative Booth paid by floor brokers and clearing firms. *See* SR–Phlx–2011–181 at *http://nasdaqphlx.cchwallstreet.com/NASDAQPHLX/pdf/phlx-filings/2011/SR-Phlx-2011-181.pdf*. In 2013, Phlx eliminated the Trading/Administrative Booth Fees but increased the Floor Facility Fee and assessed this fee to Clerks, Inactive Nominees and Floor Brokers in addition to the previously charged ROTs and individual Specialists. As such, the Exchange believes that the proposed Floor Broker Desk Fee is reasonable and appropriate as a similar fee (Floor Facility Fee) currently exists to cover similar costs on Phlx. *See* Securities Exchange Act Release No. 69672 (May 30, 2013), 78 FR 33873 (June 5, 2013) (SR–Phlx–2013–58). *See* Phlx Fee Schedule Options 7, Section 9A.

If this result is achieved, the proposed fees may increase both inter-market and intra-market competition by incenting off-Floor participants to direct their orders to the Exchange, which would enhance the quality of quoting and may increase the volume of contracts traded on the Exchange.

The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the proposed Floor Fees would be applied to all similarly situated participants (*i.e.,* Floor Brokers and Floor Market Makers), and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [17] and Rule 19b–4(f)(2) thereunder,[18] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–29 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BOX–2020–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–29, and should be submitted on or before August 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16874 Filed 8–3–20; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89423; File No. SR–FINRA–2020–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Further Extend the Expiration Date of the Temporary Amendments Set Forth in SR–FINRA–2020–015

July 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the expiration date of the temporary amendments in SR–FINRA–2020–015 from July 31, 2020, to a date to be specified in a public notice issued by FINRA, which date will be at least two weeks from the date of the notice, and no later than December 31, 2020.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 8, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–015, to temporarily amend some timing, method of service and other procedural requirements in FINRA rules during the period in which FINRA's operations are impacted by the outbreak of COVID–19 (the ''May 8 Filing''). The Commission published its notice of filing and immediate effectiveness for the May 8 Filing on May 20, 2020.[3] The temporary amendments, as originally proposed in the May 8 Filing, would have expired on June 15, 2020, absent another proposed rule change filing by FINRA. On June 10, 2020, FINRA filed SR–FINRA–2020–017 to extend the expiration date of the temporary amendments set forth in the May 8 Filing from June 15, 2020, to July 31, 2020 (the ''June 10 Filing''). The Commission published its notice of filing and immediate effectiveness for the June 10 Filing on June 12, 2020.[4]

FINRA proposed, and subsequently extended, the temporary amendments set forth in the May 8 Filing to address the substantial impacts of the COVID–19 outbreak on FINRA's operations.[5] Among other things, the need for FINRA staff, with limited exceptions, to work remotely and restrict in-person activities—consistent with the recommendations of public health officials—made it challenging to meet certain procedural requirements and perform certain functions required under FINRA rules. The temporary amendments in the proposed rule change addressed these concerns by easing logistical and other issues and providing FINRA with needed flexibility for its operations during the COVID–19 outbreak.

The COVID–19 conditions necessitating the temporary amendments in the May 8 Filing—and the extension of that relief provided for in the June 10 Filing—persist. FINRA continues to face the same logistical and other challenges stemming from the COVID–19-related public health risks for in-person activities and the continued need for FINRA staff, with few exceptions, to work remotely to protect their health and safety. Working remotely makes it difficult to, among other things, send and receive hard copy documents and conduct in-person oral arguments.

FINRA has established a COVID–19 task force that is working with outside health experts to develop a data-driven, staged plan for FINRA staff to safely return to working in FINRA office locations and resume other in-person activities. In developing its plan, FINRA will consider numerous data points and criteria, including, among others, public health considerations such as trends in COVID–19 cases, government orders addressing COVID–19, and the availability of, and risks associated with, public transportation. With COVID–19 transmission rates, orders and other localized considerations in a state of flux, and numerous states experiencing negative trends, FINRA must remain flexible in order to protect the health and safety of its staff and other stakeholders.

In light of those considerations and its assessment of current COVID–19 conditions, FINRA anticipates its staff continuing to work remotely and otherwise restricting in-person activities—to the extent possible—for at least several months. Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments in the May 8 Filing from July 31, 2020, to a date to be specified in a public notice issued by FINRA, which date will be at least two weeks from the date of the notice, and no later than December 31, 2020.[6] The extension of these temporary amendments will help minimize the impact of the COVID–19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its staff.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act,[8] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change to extend the expiration date of the temporary amendments to FINRA rules set forth in the May 8 Filing will continue to provide FINRA, and in some cases another party to a proceeding, temporary modifications to its procedural requirements in order to allow FINRA to maintain fair processes and protect investors while operating in a remote work environment and with corresponding restrictions on its activities. It is in the public interest, and consistent with the Act's purpose, for FINRA to operate pursuant to this temporary relief. The temporary amendments allow FINRA to specify filing and service methods, extend certain time periods, and modify the format of oral argument for FINRA disciplinary and eligibility proceedings and other review processes in order to cope with the current pandemic conditions. In addition, extending this temporary relief will further support FINRA's disciplinary and eligibility proceedings and other review processes that serve a critical role in providing investor protection and maintaining fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change, which extends the expiration date of the temporary rule amendments in the May 8 Filing to a date to be specified in a public notice issued by FINRA, and no later than December 31,

[3] *See* Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–015).

[4] *See* Securities Exchange Act Release No. 89055 (June 12, 2020), 85 FR 36928 (June 18, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–017).

[5] As noted in the May 8 Filing and June 10 Filing, the temporarily amended FINRA rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] FINRA is closely monitoring the impact of COVID–19 on its operations. If the temporary relief from the rule requirements identified in the May 8 Filing is necessary beyond the December 31, 2020 sunset provision, FINRA will submit a separate rule filing to extend the expiration date of the temporary relief under those rules. In addition, if conditions improve such that the temporary relief is no longer necessary prior to December 31, 2020, the proposed rule change would allow FINRA to set an earlier expiration date for the temporary relief.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3(b)(8).

2020, will prevent unnecessary impediments to FINRA's operations and FINRA's investor protection goals that would otherwise result if the temporary amendments were to expire on July 31, 2020. FINRA does not believe that the proposed rule change will have any material negative effect on members and will not impose any new costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with its May 8 Filing and June 10 Filing, FINRA has also asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. As in both its May 8 Filing and June 10 Filing, FINRA has reiterated that the requested relief in this proposed rule change will help minimize the impact of the COVID–19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.[11] We also note that this proposal, like FINRA's May 8 Filing and June 10 Filing, provides only temporary relief from, as FINRA states, the timing, method of service and other procedural requirements, described more fully in FINRA's May 8 Filing, during the period in which FINRA's operations are impacted by COVID–19. As proposed, these changes would be in place through a date to be specified in a public notice issued by FINRA, which date will be at least two weeks from the date of the notice, and no later than December 31, 2020.[12] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–022 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2020–022. 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–022 and should be submitted on or before August 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16875 Filed 8–3–20; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[11] *See* May 8 Filing, 85 FR at 31833.

[12] As noted above, *see supra* note 6, FINRA states that if the temporary relief from the rule requirements identified in the May 8 Filing is necessary beyond December 31, 2020, FINRA will submit a separate rule filing to extend the expiration date of the temporary relief under those rules. In addition, if conditions improve such that the temporary relief is no longer necessary prior to December 31, 2020, the proposed rule change would allow FINRA to set an earlier expiration date for the temporary relief.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89421; File No. SR–ISE–2020–30]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Sections 1, 3, and 6

July 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 7, Section 6, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions, and Options 7, Section 3, Regular Order Fees and Rebates.

The Exchange originally filed the proposed pricing change on July 9, 2020 (SR–ISE–2020–29). On July 20, 2020, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 amend Options 7, Section 6, Other Options Fees and Rebates. Specifically, the Exchange proposes to eliminate a discount in Options 7, Section 6H related to the Crossing Fee Cap. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions, and Options 7, Section 3, Regular Order Fees and Rebates. Each change will be described below.

Options 7, Section 6

Today, the Exchange offers a Crossing Fee Cap of $90,000 per month, per Member on all Firm Proprietary [3] transactions that are part of the originating or contra-side of a Crossing Order [4] within Options 7, Section 6H. Members that elect, prior to the start of the month, to pay $65,000 per month, per Member are entitled to have their crossing fees capped at that level instead.

By way of background regarding the Crossing Fee Cap, today, fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options are set forth in Options 7, Section 5 and are not included in the calculation of the monthly fee cap. A service fee of $0.00 per side will apply to all order types that are eligible for the fee cap.[5] Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap the Exchange will attribute eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

At this time, the Exchange is proposing to eliminate the opportunity for Members to elect, prior to the start of the month, to pay $65,000 per month, per Member to have their crossing fees capped at that level, instead of the current cap of $90,000 per month, per Member. The Exchange has offered this reduced cap since 2015, provided Members pay prior to the start of the month. While some Members did elect this option in prior years, and continued to elect this option through 2020, no new Member initially elected this option in 2020. The Exchange does not believe this discount incentivizes Members to bring Crossing Order flow to the Exchange as originally intended. With this proposal, the Exchange would not accept elections from Members to have their crossing fees capped at $65,000 for the month of July 2020 and moving forward. Finally, the Exchange notes that all Members remain eligible to have their fees capped at $90,000 per month, per Member.

The Exchange proposes several technical amendments to Options 7, Section 6H including: (1) Adding punctuation; (2) capitalizing the term ''member'' in several places; and (3) updating a citation from ''Section III'' to ''Section 5.''

Options 7, Section 1

The Exchange proposes an amendment to Options 7, Section 1, General Provisions. The Exchange proposes to amend the description of Penny Symbols to replace the term ''Penny Pilot Program'' with ''Penny Interval Program.'' On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the ''OLPP Program'').[6] The Exchange recently filed a proposal to amend ISE Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''OLPP'').[7] The Exchange's proposal amended ISE Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program. This proposed change to Options 7, Section 1 conforms the name of the program.

Options 7, Section 3

The Exchange proposes to update an incorrect reference within Options 7, Section 3 to the Crossing Fee Cap to change the reference from ''Section IV.H'' to ''Options 7, Section 6.H.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* Options 7, Section 1.

[4] Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or Qualified Contingent Cross order. All eligible volume from affiliated Members is aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

[5] The service fee shall apply once a member reaches the fee cap level and shall apply to every contract side above the fee cap. A member who does not reach the monthly fee cap will not be charged the service fee.

[6] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (''Approval Order'').

[7] *See* SR–ISE–2020–24 (not yet published).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [11] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[12] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [13]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [14] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 6

The Exchange believes that it is reasonable to amend Options 7, Section 6H to eliminate the opportunity for Members to elect, prior to the start of the month, to pay $65,000 per month, per Member to have their crossing fees capped at that level instead of at $90,000 per month, per Member. This discount was intended to incentivize members to bring Crossing Order flow to the Exchange. While some Members did elect this option in prior years, and continued to elect this option through 2020, no new Member initially elected this option in 2020. The Exchange notes that only a small percentage of ISE Members elected this discount and, therefore, would no longer receive the discount going forward. The Exchange does not believe this discount incentivizes Members to bring Crossing Order flow to the Exchange as originally intended and, therefore, proposes to eliminate this discount. The Exchange was unable to incentivize any new Member to elect the discount in 2020 and, therefore, attract additional Crossing Order flow. The Exchange would continue to cap all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order at $90,000 per month, per Member.

The Exchange believes that it is equitable and not unreasonably discriminatory to amend Options 7, Section 6H to eliminate the opportunity for Members to elect, prior to the start of the month, to pay $65,000 per month, per Member to have their crossing fees capped at that level instead of at $90,000 per month, per Member. The Exchange would not accept elections from any Member to have their crossing fees capped at $65,000 per month, per Member for the month of July 2020 and moving forward. Also, all Members remain eligible to have their fees capped at $90,000 per month, per Member. Specifically, with respect to the small percentage of ISE Members, who elected this discount and would no longer receive the discount, the Exchange notes that those Members would continue to be offered the opportunity to cap their crossing fees at $90,000. Also, the Exchange notes that it offers Members discounts and rebates to attract order flow to ISE. Depending on the amount of order flow attracted to the Exchange, certain discounts or rebates may be discontinued in favor of other discounts or rebates. For example, as of July 1, 2020, the Exchange began offering a Facilitation and Solicitation Break-up Rebate for Non-Select Symbols to encourage increased originating regular and complex Non-Nasdaq ISE Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer, and Priority Customer order flow to the Facilitation and Solicited Order Mechanisms, thereby potentially increasing the initiation of and volume executed through such auctions. Additional auction order flow provides market participants with additional trading opportunities at potentially improved prices.[15]

The Exchange's proposed technical amendments to Options 7, Section 6H are reasonable, equitable and not unfairly discriminatory. These amendments are non-substantive and clarify the current rule text.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term ''Penny Pilot Program'' with ''Penny Interval Program'' is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program, which governs the listing of certain standardized options.

Options 7, Section 3

The Exchange's proposal to update an incorrect reference within Options 7, Section 3 to the Crossing Fee Cap is reasonable, equitable and not unfairly discriminatory. This change will bring clarity to the Pricing Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[11] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[12] *See NetCoalition,* at 534–535.

[13] *Id.* at 537.

[14] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[15] *See* Securities Exchange Act Release No. 89321 (July 15, 2020) (SR–ISE–2020–26).

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition.

Options 7, Section 6

The Exchange believes that it does not impose an undue burden on competition to amend Options 7, Section 6H to eliminate the opportunity for Members to elect, prior to the start of the month, to pay $65,000 per month, per Member to have their crossing fees capped at that level instead of at $90,000 per month, per Member. The Exchange has offered this opportunity to all Members. While some Members did elect this option in prior years, and continued to elect this option through 2020, no new Member initially elected this option in 2020. Therefore, the Exchange believes that eliminating the opportunity for Members to elect, prior to the start of the month, to pay the discounted fee does not impose an undue burden on competition, as there was no new interest from Members, who had not previously elected this opportunity, in 2020 to pay the lower fee. The Exchange would not accept elections from any Member to have their crossing fees capped at $65,000 per month, per Member for the month of July 2020 and moving forward. Also, all Members remain eligible to have their fees capped at $90,000 per month, per Member.

The Exchange's proposed technical amendments to Options 7, Section 6H are non-substantive and do not impose a burden on competition.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term ''Penny Pilot Program'' with ''Penny Interval Program'' does not impose an undue burden on competition. This amendment seeks to conform the name of the program, which governs the listing of certain standardized options.

Options 7, Section 3

The Exchange's proposal to update an incorrect reference within Options 7, Section 3 to the Crossing Fee Cap does not impose an undue burden on competition. This change will bring clarity to the Pricing Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and Rule 19b–4(f)(2)[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–30 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2020–30. 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–ISE–2020–30 and should be submitted on or before August 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16873 Filed 8–3–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #16532; California Disaster Number CA–00321 Declaration of Economic Injury Administrative Declaration Amendment of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 07/07/2020.

Incident: Civil Unrest.

Incident Period: 05/26/2020 and continuing.

DATES: Issued on 07/27/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/07/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of an Economic Injury declaration for the State of California dated 07/07/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: San Diego.

Contiguous Counties:

California: Imperial, Orange, Riverside.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–16909 Filed 8–3–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16485 and #16486; California Disaster Number CA–00319]

Administrative Declaration Amendment of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of a disaster for the State of California dated 06/17/2020.

Incident: Civil Unrest.

Incident Period: 05/26/2020 and continuing.

DATES: Issued on 07/27/2020.

Physical Loan Application Deadline Date: 09/16/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/17/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of an Administrative declaration for the State of California, dated 06/17/2020, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 09/16/2020. This declaration is also amended to include the following areas as adversely affected by the disaster.

Primary Counties: Alameda.

Contiguous Counties:

California: Contra Costa, San Francisco, San Joaquin, San Mateo, Santa Clara, Stanislaus.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–16910 Filed 8–3–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16557 and #16558; CALIFORNIA Disaster Number CA–00324]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 07/27/2020.

Incident: Niland Fire.

Incident Period: 06/28/2020 through 06/29/2020.

DATES: Issued on 07/27/2020.

Physical Loan Application Deadline Date: 09/25/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/27/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed 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: Imperial.

Contiguous Counties:

California: Riverside, San Diego.

Arizona: La Paz, Yuma.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16557 5 and for economic injury is 16558 0.

The States which received an EIDL Declaration # are California, Arizona.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–16913 Filed 8–3–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11164]

30-Day Notice of Proposed Information Collection: Medical History and Examination

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to September 2, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to: Karl Field, Medical Director, Office of Medical Clearances, Bureau of

Medical Services, 2401 E Street NW, SA–1, Room L–101, Washington, DC 20522–0101, and who may be reached at 202–663–1591 or at *Fieldke@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Medical History and Examination.
- *OMB Control Number:* 1405–0068.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Medical Services (MED).
- *Form Number:* DS–1843 and DS–1622.
- *Respondents:* Contractors and eligible family members.
- *Estimated Number of Respondents:* 2,039.
- *Estimated Number of Responses:* 2,039.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 2,039 hours.
- *Frequency:* Upon application for an overseas position and then intermittent, as needed.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Forms DS–1843 and DS–1622 collect medical history, lab tests, and physical examinations for all individuals applying for overseas positions, including their eligible family members. Forms DS–1843 and DS–1622 are designed to collect sufficient and current medical information on the individual in order for a medical provider to make a medical clearance determination for initial appointment to an overseas assignment. They are also used to determine whether the individual or eligible family member will have appropriate medical and/or educational resources at a diplomatic mission/host country abroad to maintain the health and safety of the individual or family member. The forms were updated to include questions regarding employment agency information for non-foreign service agencies. Once the collection instruments have been approved, the DS–1843/1622 can be used by respondents employed by both foreign and non-foreign service agencies, rendering the DS–6561 form redundant. As a result, the DS–6561 (OMB Control No. 0194) would be discontinued upon OMB approval of the revised DS–1843 and DS–1622 forms.

Methodology

The respondent will obtain the DS–1843 and DS–1622 forms from their human resources representative or download the forms from a Department website. The respondent will complete and submit the forms offline.

Karl Field,

Director of Medical Clearances.

[FR Doc. 2020–16853 Filed 8–3–20; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 11155]

60-Day Notice of Proposed Information Collection: Individual, Corporate or Foundation, and Government Donor Letter Applications

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 5, 2020.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0031'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: WallaceCR2@state.gov.*
- *Regular Mail:* Send written comments to U.S. Department of State, 2201 C Street, Room 1821, Washington, DC 20520.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Chanel Wallace, 2201 C Street NW, Room 1821, Washington, DC 20520, who may be reached on (202) 647–7730 or at *WallaceCR2@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Individual, Corporate or Foundation and Government Donor Letter Application.
- *OMB Control Number:* 1405–0218.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Office of Emergencies in the Diplomatic and Consular Service (EDCS).
- *Form Number:* Donor Form—Individual (DS–4273), Donor Form—Corporate or Foundation (DS–4272), Donor Form—Government (DS–4271).
- *Respondents:* Individuals, Corporations, or Foundations that make donations to the Department.
- *Estimated Number of Respondents:* 4,079.
- *Estimated Number of Responses:* 4,079.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 680 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed

personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Office of Emergencies in the Diplomatic and Consular Service (EDCS) manages the solicitation and acceptance of gifts to the U.S. Department of State. The information requested via donor letters is a necessary first step to accepting donations. The information is sought pursuant to 22 U.S.C. 2697, 5 U.S.C. 7324 and 22 CFR, Part 3) and will be used by EDCS's Gift Fund Coordinator to demonstrate the donor's intention to donate either an in-kind or monetary gift to the Department. This information is mandatory and must be completed before the gift is received by the Department.

Methodology

The information collection forms will be available to program offices who have authority to solicit or accept donations on behalf of the Department. Donors can also request and complete hard copies of the form if internet access is not available. After completion, all forms are mailed to EDCS.

Crystal F. Jobe,

Gift Funds and K Funds Coordinator.

[FR Doc. 2020–16957 Filed 8–3–20; 8:45 am]

BILLING CODE 4710–37–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–54]

Petition for Exemption; Summary of Petition Received; IFL Group, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 24, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0112 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Megan Blatchford, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Megan.B.Blatchford@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 30, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0112.

Petitioner: IFL Group, Inc.

Section of 14 CFR Affected: § 121.436(a)(3).

Description of Relief Sought: The IFL Group, Inc. (IFL) seeks relief from § 121.436(a)(3) of the Code of Federal Regulations to allow IFL pilots to use the flight time gained as a pilot in command (PIC) at IFL in the Falcon Jet DA–20 operating under operations specification A057 and in accordance with §§ 135.4(a)(1), (a)(2)(i), and (a)(2)(ii) to count toward the 1,000 hours of flight experience required by § 121.436(a)(3) to serve as PIC in part 121 air carrier operations.

[FR Doc. 2020–16931 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–52]

Petition for Exemption; Summary of Petition Received; Flamingo Air Academy, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 10, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0509 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking

process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones, 202–267–6109, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 30, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0509.

Petitioner: Flamingo Air Academy, Inc.

Section(s) of 14 CFR Affected: §§ 141.5(e) and 141.17.

Description of Relief Sought: Flamingo Air Academy, Inc. (Flamingo Air) requests relief from Title 14 Code of Federal Regulations, part 141, §§ 141.5(e) and 141.17 to allow its part 141 provisional pilot school certificate to be reinstated because the effects of Coronavirus Disease 2019 (COVID–19) impeded it from meeting the ten (10) graduate requirement before its provisional pilot school certificate expired on March 31, 2020. Flamingo Air is seeking relief similar to what the FAA allowed under Special Federal Aviation Regulation (SFAR) No. 118, which gives pilot schools whose 24 calendar-month window expires in April through June 2020, until December 31, 2020, to meet § 141.5(d) and (e), subject to certain conditions.

[FR Doc. 2020–16928 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–50]

Petition for Exemption; Summary of Petition Received; DroneXum, LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 24, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0802 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 30, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0802.

Petitioner: DroneXum, LLC.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); 91.417(a) and (b); 137.19(c), (d), (e)(2)(ii), (e)(2)(iii) and (e)(2)(v); 137.31; 137.33; 137.41(c); and 137.42.

Description of Relief Sought: DroneXum, LLC seeks an amendment of Exemption No. 18413, seeking relief from condition and limitation number 27c in order to operate the HSE–UAV AG V8A+ v2 unmanned aircraft system, above 55 pounds, closer than 500 feet near: Vessels, vehicles, and structures.

[FR Doc. 2020–16929 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–44]

Petition for Exemption; Summary of Petition Received; Parks College of Aviation, Engineering and Technology at Saint Louis University

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and

must be received on or before August 24, 2020.

ADDRESSES: Send comments identified by docket number FAA–2018–0525 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 30, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0525.

Petitioner: Parks College of Aviation, Engineering and Technology at Saint Louis University.

Sections of 14 CFR Affected: § 61.195(h)(2) and (3).

Description of Relief Sought: Parks College of Aviation, Engineering and Technology at Saint Louis University petitions for an exemption to allow it to conduct approved Title 14 of the Code of Federal Regulations (14 CFR), part 141, Appendix F flight training associated with a first-time flight instructor applicant utilizing instructors who do not meet the requirements of § 61.195(h)(2) and (3). This exemption would not apply to ground training that includes *Fundamentals of Instructing,* as described in part 141, Appendix F.

[FR Doc. 2020–16932 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2018–1051]

Agency Information Collection Activities: Request for Comments; Clearance of a New Approval of Information Collection: Formal Complaints Collection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about its intention to request the Office of Management and Budget (OMB) approval for an existing information collection. This collection involves the filing of a complaint with the FAA alleging a violation of any requirement, rule, regulation, or order issued under certain statutes within the jurisdiction of the FAA. The FAA will use the information collected to determine if the alleged violation warrants investigation or action.

DATES: Written comments should be submitted by October 5, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Cole R. Milliard, Office of the Chief Counsel, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

By fax: 202–267–5106.

FOR FURTHER INFORMATION CONTACT: Cole R. Milliard by email at: *Cole.Milliard@faa.gov;* phone 202–267–3452.

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 the FAA's performance; (b) the accuracy of the estimated burden; (c) ways for the FAA to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Formal Complaints Collection.

Form Numbers: N/A.

Type of Review: New clearance of an existing information collection.

Background: The FAA issued a notice of proposed rulemaking (NPRM) to revise 14 CFR part 13. The NPRM published in the **Federal Register** on February 12, 2019 (84 FR 3614). The NPRM proposed to update the procedural rules governing FAA investigations and enforcement actions. The proposed revisions include updates to statutory and regulatory references, updates to agency organizational structure, elimination of inconsistencies, clarification of ambiguity, increases in efficiency, and improved readability. Section 13.5, currently and as proposed in the NPRM, allows any person to file a formal complaint with the FAA Administrator regarding a person's violation of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes. Thus, the overall burden associated with submission and processing of these complaints is not new. It is also optional, as there is no obligation for any individual to file a formal complaint.

As revised in proposed 14 CFR 13.5(b), a formal complaint must: (1) Be submitted to the FAA in writing; (2) be identified as a complaint seeking an appropriate order or other enforcement action; (3) identify the subjects of the complaint; (4) state the specific statute, rule, regulation, or order that each subject allegedly violated; (5) contain a concise but complete statement of the facts relied upon to substantiate each allegation; (6) include the name, address, telephone number, and email of the person filing the complaint; and (7) be signed by the person filing the complaint or an authorized representative. After the FAA confirms that the complaint meets these requirements, it sends a copy of the complaint to the subjects of the complaint and gives them an opportunity to submit a written answer. If a complaint does not meet these requirements, it is considered a report of violation under proposed 14 CFR 13.2.

The FAA uses the information in the complaint and answer to determine if there are reasonable grounds for investigating the complaint. If the FAA determines there are reasonable grounds, the FAA proceeds with an investigation. If not, the FAA may dismiss the complaint and give the reason for dismissal in writing to both the person who filed the complaint and the subjects of the complaint.

Respondents: Formal complaints are typically submitted by an individual or organization. Almost all formal complaints are evenly split between three basic categories (complainant listed first): Individual vs. individual, individual vs. organization, and organization vs. organization.

Frequency: The FAA estimates this collection of information would result in about seven formal complaints per year based on FAA data.

Estimated Average Burden per Response: The estimated average burden on the public for each complaint and response under § 13.5 is eight hours, broken down as follows. It would take an individual about four hours to write a formal complaint acceptable under § 13.5. Most of this time would be the research required to determine which laws the subject of the complaint allegedly violated. The second largest amount of time would be devoted to writing the ''concise but complete'' statement of facts substantiating the complaint. After the FAA reviews the complaint and confirms it meets the requirements, each subject of the complaint would have an opportunity to submit a written answer. The FAA estimates it would take the subject of the complaint about four hours to write an answer to the complaint.

The estimated average burden on the FAA for each complaint is eight hours, broken down as follows. A complaint would take the FAA no more than four hours to review to confirm it meets the requirements as laid out in 14 CFR 13.5(b). The FAA would take an additional hour to send the complaint to the subjects of that complaint. The FAA would then take another estimated three hours to determine if an investigation would be necessary.

Estimated Total Annual Burden:[1] The FAA estimates the total annual combined (public + FAA) annual burden and cost of the information requirements to be about 112 hours and $7,138.

For the public, the estimated total annual hourly burden would be 56 hours, and the estimated total annual cost burden would be about $2,036. This burden to the public is calculated as follows. Based on the number of formal complaints the FAA received during the three years preceding preparation of the NPRM, the FAA estimates there would be seven complaints filed per year by seven complainants. Each complaint would take no more than four hours to complete. The annual hourly burden would be 28 hours for the public to submit formal complaints (7 complaints × 4 hours = 28 hours). After the FAA reviews the complaint and confirms it meets the requirements, each subject of the complaint would have an opportunity to submit a written answer. The FAA estimates this would take the subject four hours. The annual hourly burden to the public would be another 28 hours for the subject of the complaint to provide a written answer (7 written answers × 4 hours = 28 hours).[2] The total annual hourly burden to the public would be 56 hours. Since a complainant and a subject of a complaint could be employed in any occupation, the FAA selected a mean hourly wage rate for all occupations in the United States. The U.S. Bureau of Labor Statistics estimates the mean hourly wage rate of all occupations was $24.98 in May 2018.[3] The FAA estimates the total burdened hourly wage rate is $36.36 when including full employee benefits.[4] The total annual cost burden to the public would be about $2,036 ($36.36 × 56 hours). In addition to labor hours, the complainants would incur copying and mailing costs for seven annual complaints estimated at $102.90; or $52.15 for complainants [($.50 for a 5-page complaint, including attachments, at $.10 per page[5] + $6.95 first-class certified mail with return receipt[6]) × 7] and $50.75 for subjects of complaints [($.30 for a 3-page response, including attachments, at $.10 per page + $6.95 first-class certified mail with return receipt) × 7].

For the FAA, the estimated total annual hourly burden would be 56 hours, and the estimated total annual cost burden would be about $4,846. This burden to the FAA is calculated as follows. The complaint would take the FAA no more than four hours to review to confirm it meets the requirements as laid out in 14 CFR 13.5(b), which results in an annual time burden of 28 hours (7 complaints × 4 hours = 28 hours). The FAA would take an additional hour to send the complaint to the subjects of that complaint, which would add seven hours (7 complaints × 1 hour = 7 hours). The FAA would then take another estimated three hours to determine if an investigation would be necessary, adding 21 hours (7 complaints × 3 hours = 21 hours) to the FAA annual burden. This results in a total annual burden of 56 hours (28 hours + 7 hours + 21 hours = 56 hours) for the FAA. The FAA assumes an FAA hourly wage rate of $63.51.[7] The FAA estimates the total burdened FAA hourly wage rate to be $86.54 when including full civilian employee benefits.[8] The total annual cost burden to the FAA to review and process the complaint would be $4,846 ($86.54 × 56 = $4,846). In addition to labor hours, the FAA would incur copying and mailing costs for seven annual complaints estimated at $152.95; or $52.85 for mailing complaints to subjects [($.60 for a 6-page complaint with a cover letter at $.10 per page + $6.95 first-class certified mail with return receipt) × 7] and $100.10 for mailing the agency's determination to both complainants and subjects of complaints [2 × ($.20 for a 2-page determination letter at $.10 per page + $6.95 first-class certified mail with return receipt) × 7].

[1] For this notice, the FAA used updated figures in its estimate from those used in the NPRM.

[2] This assumes each formal complaint would meet the requirements as laid out in 14 CFR 13.5(b), so the FAA could send a copy of the complaint to the subject of each complaint to give them an opportunity to submit a written answer.

[3] Source: U.S. Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates, see Occupational Code #00–0000, All Occupations (*https://www.bls.gov/oes/2018/may/oes_nat.htm*).

[4] Derived from the U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation—September 2019 (*https://www.bls.gov/news.release/archives/ecec_09172019.pdf,* September 17, 2019 release), which indicates that wages and salaries were 68.6% of total employee compensation (salary and benefits) providing a fringe benefit factor of about 1.4577 (=1 ÷ 0.686). The FAA uses this factor to estimate the total ''burdened'' employee compensation (salary and benefits) hourly wage rate of $36.36 (=$24.98 × 1.4557).

[5] *https://www.gpo.gov/docs/default-source/gpoexpress-pdf-files/gpo_express_pricelist.pdf.*

[6] *https://www.usps.com/ship/insurance-extra-services.htm.*

[7] The FAA assumes that 75% of the work would be performed by an FAA attorney at a grade level 14 step five hourly wage of $60.83 and 25% by an FAA attorney at a grade level 15 step five hourly wage of $71.56 (wages based on U.S. Office of Personnel Management General Schedule Salary Data).

[8] The FAA uses a civilian fringe benefit cost factor of 36.25% (or 1.3625) to estimate the total ''burdened'' FAA employee compensation (salary and benefits) hourly wage rate of $86.54 (=$63.51 × 1.3625). The civilian fringe benefit cost factor is based on guidance from the U.S. Office of Management and Budget (*https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2008/m08-13.pdf*).

Issued in Washington, DC, on July 30, 2020.

Naomi Carol Tsuda,

Assistant Chief Counsel for Enforcement Division.

[FR Doc. 2020–16966 Filed 8–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of one entity currently included on OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 30, 2020, OFAC updated the entry on the SDN List for the following entity, whose property and interests in property continue to be blocked under the Cuban Assets Control Regulations (31 CFR part 515).

Entity

1. HAVANA INTERNATIONAL BANK, LTD., 20 Ironmonger Lane, London EC2V 8EY, United Kingdom [CUBA].

The listing for the entity now appears as follows:

HAVIN BANK LIMITED (a.k.a. HAVANA INTERNATIONAL BANK, LTD), 4th Floor, 189 Marsh Wall, London E14 9SH, United Kingdom; Edificio Atlantic, Oficina 4 H, Calle D No. 8 entre 1ra. y 3ra., Vedado, Plaza de la Revolucion, Havana 10400, Cuba; SWIFT/BIC HAVIGB2L; website *www.havanaintbank.co.uk;* alt. Website *www.hib.uk.com;* Company Number 01074897 (United Kingdom) [CUBA].

Dated: July 30, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–16939 Filed 8–3–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 944, Form 944(SP), Form 944–X, and Form 944–X(SP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 944, Employer's Annual Employment Tax Return, Form 944(SP), Declaracion Federal Anual de Impuestos del Patrono o Empleador, and Form 944–X, Adjusted Employer's Annual Federal Tax Return or Claim for Refund, and 944–X(SP), Ajuste a la Declaración Federal ANUAL del Patrono o Reclamación de Reembolso.

DATES: Written comments should be received on or before October 5, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Employment Tax Return.

OMB Number: 1545–2007.

Form Number: Forms 944, 944(SP), 944–X, and 944–X(SP).

Abstract: The information on Form 944 will be collected to ensure the smallest nonagricultural and non-household employers are paying the correct amount of social security tax, Medicare tax, and withheld federal income tax. Information on line 13 will be used to determine if employers made any required deposits of these taxes. Form 944(SP) is the Spanish version of the Form 944. 944–X and Form 944–X(SP) is used to correct errors made on Form 944.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, Businesses and other for-profit organizations, Not-for-profit institutions, and State, Local, and tribal Governments.

Estimated Number of Respondents: 137,000.

Estimated Time per Respondent: 15 hours 33 minutes.

Estimated Total Annual Burden Hours: 2,191,570.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 30, 2020.

ChaKinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–16973 Filed 8–3–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the General Business Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 3800, General Business Credit.

DATES: Written comments should be received on or before October 5, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Chakinna Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: General Business Credit.

OMB Number: 1545–0895.

Form Number: Form 3800.

Abstract: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, work opportunity credit, welfare-to-work credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Current Actions: We have made no changes to Form 3800 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms and individuals.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 33.38 hours.

Estimated Total Annual Burden Hours: 8,345,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 30, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–16970 Filed 8–3–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 15597

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 15597, Foreclosure Sale Purchaser Contact Information Request.

DATES: Written comments should be received on or before October 5, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Chakinna Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreclosure Sale Purchaser Contact Information Request.

OMB Number: 1545–2199.

Form Number: Form 15597.

Abstract: Form 15597, Foreclosure Sale Purchaser Contact Information Request, is information requested of individuals or businesses that have purchased real property at a third-party foreclosure sale. If the IRS has filed a ''Notice of Federal Tax Lien'' publically notifying a taxpayer's creditors that the taxpayer owes the IRS a tax debt, AND a creditor senior to the IRS position later forecloses on their creditor note (such as the mortgage holder of a taxpayers primary residence) THEN the IRS tax claim is discharged or removed from the property (if the appropriate foreclosure rules are followed) and the foreclosure sale purchaser buys the property free and clear of the IRS claim EXCEPT that the IRS retains the right to ''redeem'' or buy back the property from the foreclosure sale purchaser w/in 120 days after the foreclosure sale. Collection of this information is authorized by 28 U.S.C. 2410 and IRC 7425.

Current Actions: There are no changes made to the burden previously reported to OMB. This is for renewal purposes only.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Responses: 150.

Estimated Time per Respondent: 4.08 hours

Estimated Total Annual Burden Hours: 613.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 30, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–16972 Filed 8–3–20; 8:45 am]

BILLING CODE 4830–01–P

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