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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0199; Project Identifier MCAI-2021-00016-R; Amendment 39-21579; AD 2021-11-17]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. This AD was prompted by a report of increased control force in the collective axis. This AD requires a one-time visual inspection of the main rotor actuator (MRA), as specified in a European Aviation Safety Agency (now 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 is effective July 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 16, 2021.

ADDRESSES: 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 material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321,

Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0199.

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-2021-0199; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Katherine Venegas, Aviation Safety Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627-5353; email katherine.venegas@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0284, dated December 20, 2018 (EASA AD 2018-0284), to correct an unsafe condition for Airbus Helicopters Deutschland GmbH (AHD) Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters. Model EC635 P2+, EC635 P3, EC635 T1, and EC635 T3 helicopters 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 helicopters in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. The NPRM published in the **Federal Register** on March 30, 2021 (86 FR 16550). The NPRM was prompted by a report of increased control force in the collective axis on an AHD Model EC135

helicopter. Subsequent inspections determined that a nut on a piston of the MRA had cracked and separated from the piston rod. The NPRM proposed to require a one-time visual inspection of the MRA, as specified in an EASA AD.

The FAA is issuing this AD to prevent failure of the MRA and subsequent loss of control of the helicopter. See EASA AD 2018-0284 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information Under 14 CFR Part 51

EASA AD 2018-0284 describes procedures for a one-time visual inspection of the MRA and depending on the results, replacing the affected parts.

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.

Differences Between This AD and the EASA AD

The EASA AD requires contacting Airbus Helicopters or replacing an affected part, whereas this AD requires performing the corrective action in accordance with FAA-approved procedures or removing the affected parts from service instead. Where the EASA AD specifies a compliance time for the inspection in terms of calendar time or flight hours, this AD requires a compliance time in terms of hours time-in-service instead. Where the EASA AD specifies a compliance time of 15 days for reporting the inspection results, this AD requires that the findings be reported within 30 days.

Interim Action

The FAA considers this AD interim action. If final action is later identified,

the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 331 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Inspecting the nuts on the MRA pistons takes about 1 work-hour for an estimated cost of \$85 per helicopter and \$28,135 for the U.S. fleet. Replacing the MRA takes about 7 work-hours and parts cost \$325,081 for an estimated cost of \$325,676 per helicopter. Repairing the MRA takes up to about 8 work-hours and parts cost about \$110 for an estimated cost of up to \$790 per MRA. Reporting information takes about 1 hour for an estimated cost of \$85 per helicopter and \$28,135 for the U.S. fleet.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120-0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177-1524.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing

regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021-11-17 Airbus Helicopters

Deutschland GmbH (AHD): Amendment 39-21579; Docket No. FAA-2021-0199; Project Identifier MCAI-2021-00016-R.

(a) Effective Date

This airworthiness directive (AD) is effective July 16, 2021.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters, certificated in any category.

Note 1 to paragraph (c): Helicopters with an EC135P3H designation are Model EC135P3 helicopters. Helicopters with an EC135T3H designation are Model EC135T3 helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6710, Main Rotor Control.

(e) Reason

This AD was prompted by a report of increased control force in the collective axis. The FAA is issuing this AD to prevent failure of the main rotor actuator and subsequent loss of control of the helicopter.

(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 Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018-0284, dated December 20, 2018 (EASA AD 2018-0284).

(h) Exceptions to EASA AD 2018-0284

(1) Where EASA AD 2018-0284 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (3) of EASA AD 2018-0284 specifies contacting Airbus Helicopters, this AD requires performing the corrective action in accordance with FAA-approved procedures.

(3) Where paragraph (4) of EASA AD 2018-0284 specifies an alternative method to comply with the requirements of paragraph (3) of EASA AD 2018-0284 by replacing an affected part, this AD requires removing the affected part from service as an alternative method.

(4) Where paragraph (1) of EASA AD 2018-0284 specifies a compliance time of "3 months or 50 flight hours, whichever occurs first," this AD requires a compliance time of within 50 hours time-in-service (TIS) from the effective date of this AD.

(5) Where paragraph (2) of EASA AD 2018-0284 specifies a compliance time of "15 days," this AD requires using a compliance time of "30 days."

(6) The "Remarks" section of EASA AD 2018-0284 does not apply to this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 manager of the 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.

(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.

(j) Related Information

For more information about this AD, contact Katherine Venegas, Aviation Safety Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627-5353; email katherine.venegas@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 Aviation Safety Agency (EASA) AD 2018-0284, dated December 20, 2018.

(ii) [Reserved]

(3) For EASA AD 2018-0284, 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 service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. 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-2021-0199.

(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 May 20, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021-12227 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0185; Project Identifier MCAI-2020-00265-R; Amendment 39-21581; AD 2021-11-19]

RIN 2120-AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) (Bell) Model 505 helicopters. This AD was prompted by the discovery of a gap between the transmission restraint assembly aft attachment hardware lower washer and mating airframe truss assembly (truss assembly) clevis lower lug. This AD requires inspecting the transmission restraint aft attachment hardware installation for a gap and corrective action depending on the inspection results. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of July 16, 2021.

ADDRESSES: For service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450-437-2862 or 800-363-8023; fax 450-433-0272; or at <https://www.bellcustomer.com>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. Service information that is incorporated by reference is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0185.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0185; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this

final rule, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email matthew.fuller@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Bell Model 505 helicopters with a truss assembly part number (P/N) SLS-030-056-015 with a serial number (S/N) listed in Attachment A of Bell Alert Service Bulletin (ASB) 505-19-12, Revision A, dated July 11, 2019 (505-19-12 Rev A). The NPRM published in the **Federal Register** on March 22, 2021 (86 FR 15146). In the NPRM, the FAA proposed to require the following within 100 hours time-in-service (TIS):

- Accessing and cleaning the lower attachment hardware securing the restraint to the truss assembly, loosening the torque on each lower nut to measure the tare, and adding a torque value of 20 inch-lbs to the measured tare of each nut and torquing each nut to this new total value.

- Inspecting for a gap around the circumference between the nut and the washer and between the washer and the truss assembly clevis lower lug mounting surface of the right-hand (RH) and left-hand (LH) sides, and if there is a gap, measuring the gap.

- If there is a gap that is less than 0.003 inch (0.076 mm), installing the hardware using the original torque value of 40 to 58 foot-pounds (55 to 78 Nm) plus tare and completing the installation of the attachment point.

- If there is a gap that is 0.003 inch (0.076 mm) to 0.020 inch (0.508 mm) inclusive, installing the hardware with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare and completing the installation of the attachment point. The NPRM also proposed to require updating records for your helicopter to indicate the new torque limits on one or both sides. Thereafter, within 100 hours TIS, and thereafter at intervals not to exceed 100 hours TIS, the NPRM proposed to

require inspecting the assembly for fretting between the washer and truss lower lug mounting surface, the security of the pitch restraint attachment hardware to make sure it does not turn freely, and the torque seal lacquer between the nut and the washer to make sure the torque seal is intact on the RH and LH sides. Depending on the inspection results, the NPRM proposed to require removing the cotter pin from service and removing the nut, washer, and bolt, and inspecting the bolt and the lower surface of the truss assembly clevis lower lug. Depending on these inspection results, the NPRM proposed to require removing the bolt from service; reworking and cleaning the lower surface of the clevis lower lug and inspecting for any cracks; removing the clevis lower lug from service; or applying primer and final paint. The NPRM then proposed to require installing the hardware with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare and completing the installation of the attachment point.

- If there is a gap that is more than more than 0.020 inch (0.508 mm), removing the nut, washer, and bolt from service and repairing or replacing the truss assembly clevis lower lug in accordance with FAA-approved procedures.

The NPRM was prompted by Canadian AD CF-2019-35, dated October 2, 2019 (Transport Canada AD CF-2019-35), issued by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for Bell Model 505 helicopters, S/Ns 65011 and subsequent. Transport Canada advises of a gap between the transmission restraint assembly aft attachment hardware lower washer and the lower lug of the truss assembly clevis identified during quality control activity of a helicopter in final assembly. This gap can occur on the RH and LH sides of the truss assembly clevis. Subsequent investigation revealed that this condition may exist on in-service helicopters. Transport Canada advises that excessive gapping at either of these locations will result in increased stress when fasteners are installed and that the increased stress may result in cracking on the clevis lower lug and subsequent failure of one or both clevis lower lugs. Transport Canada further advises that this condition, if not corrected, could lead to loss of pylon pitch stiffness, excessive pylon pitch motions leading to unknown cyclic inputs to the main rotor, and consequent loss of control of the helicopter.

Accordingly, Transport Canada AD CF-2019-35 requires identifying the S/N of the installed truss assembly, and for a helicopter with an affected truss assembly installed, performing an initial inspection of the transmission restraint aft attachment hardware installations for a gap. Depending on the inspection results, Transport Canada AD CF-2019-35 requires reducing the torque to the attachment hardware, updating records, and repetitive inspections of the attachment hardware for wear and fretting because of the reduced friction between the mating surfaces; reporting findings to Bell and accomplishing corrective actions specified by Bell; or completing the installation of the attachment hardware and updating records.

Comments

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

Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

The FAA reviewed 505-19-12 Rev A. This service information specifies procedures for an inspection of the restraint hardware installation for the presence of a gap and if needed, reducing the torque to the affected attachment hardware, a repetitive 100-hour inspection of the pitch restraint attachment hardware, and repair of fretting damage on the truss assembly clevis lower lug.

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.

Other Related Service Information

The FAA also reviewed Bell ASB 505-19-12, dated June 27, 2019. This original version of the service information contains the same procedures as 505-19-12 Rev A, except 505-19-12 Rev A corrects a torque value.

Differences Between This AD and the Transport Canada AD

The applicability of the Transport Canada AD is by helicopter S/N and requires identifying the S/N of the installed truss assembly P/N SLS-030-056-015 to determine if the helicopter is affected by the unsafe condition, whereas the applicability of this AD is by helicopters with certain serial-numbered truss assembly P/N SLS-030-056-015 installed instead. The compliance time of the initial inspections required by the Transport Canada AD is within 100 hours air time or 6 months, whichever occurs first, whereas the compliance time in this AD is within 100 hours TIS. The Transport Canada AD requires reporting information to Bell to obtain certain corrective action, while this AD requires repairing or removing affected parts from service instead.

Costs of Compliance

The FAA estimates that this AD affects 87 helicopters of U.S. registry. Labor costs are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Measuring tare and inspecting for a gap between the transmission restraint assembly aft attachment hardware lower washer and the truss assembly will take about 1 work-hour for an estimated cost of \$85 per helicopter and \$7,395 for the U.S. fleet. If required, inspecting a pitch restraint attachment point will take about 1 work-hour for an estimated cost of \$85 per attachment point per inspection cycle.

The FAA estimates the following costs to do any necessary repairs or replacements based on the results of the inspections:

- Updating records to indicate the new torque limits will take about 0.25 work-hour for an estimated cost of \$21.
- Replacing a bolt will take a minimal additional amount of time after inspecting and the part will cost about \$50.
- Reworking the lower surface of the clevis lower lug will take about 1 work-hour for an estimated cost of \$85.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–11–19 Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited):
Amendment 39–21581; Docket No. FAA–2021–0185; Project Identifier MCAI–2020–00265–R.

(a) Effective Date

This airworthiness directive (AD) is effective July 16, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 505 helicopters, certificated in any category, with a truss assembly part number (P/N) SLS–030–056–015 with a serial number listed in Attachment A of Bell Alert Service Bulletin (ASB) 505–19–12, Revision A, dated July 11, 2019 (ASB 505–19–12 Rev A).

(d) Subject

Joint Aircraft System Component (JASC) Code 5310, Fuselage Main, Structure.

(e) Unsafe Condition

The FAA is issuing this AD to address a gap between the transmission restraint assembly aft attachment hardware lower washer and the right-hand (RH) and left-hand (LH) mating airframe truss assembly (truss assembly) clevis lower lug. The unsafe condition, if not addressed, could result in increased stress, cracking and failure of one or both of the clevis lower lugs, and subsequent loss of pylon pitch stiffness, excessive pylon pitch motions leading to unknown cyclic inputs to the main rotor, and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 100 hours time-in-service (TIS) after the effective date of this AD, access the transmission restraint assembly and:

(1) Remove the safety pin at each lower nut location of the aft bolts securing the restraint to the truss assembly. Use solvent (C–304) to remove the corrosion preventive compound on each nut and washer located under the RH and LH truss assembly clevis lower lug.

(2) Loosen the torque on each lower nut while holding the bolt with a wrench until the washer turns freely while sitting on top of the nut.

(3) Measure and record the tare of each nut. For purposes of this AD, tare is the torque required to overcome the internal friction between a self-locking nut and bolt as the nut is being turned on the bolt, but before the nut contacts the washer. Add a torque value of 20 inch-lbs to the measured tare of each nut and torque each nut to this new total value.

(4) Inspect for a gap around the circumference between the nut and the washer and between the washer and the truss assembly clevis lower lug mounting surface of the RH and LH sides as illustrated in Figure 1 of ASB 505–19–12 Rev A (2 sheets). If there is a gap, measure the gap.

(i) If there is a gap that is less than 0.003 inch (0.076 mm), before further flight, install the hardware using the original torque value of 40 to 58 foot-pounds (55 to 78 Nm) plus tare. Do not exceed the limit specified in this paragraph plus tare. Install a cotter pin and apply corrosion preventive compound (C–101) and torque seal lacquer (C–049) between the nut, washer, and lower surface of the truss assembly clevis.

(ii) If there is a gap that is 0.003 inch (0.076 mm) to 0.020 inch (0.508 mm) inclusive,

before further flight, install the hardware with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare. Do not exceed the limit specified in this paragraph plus tare. Install a cotter pin. You may install an additional washer P/N NAS1149E0863P before torquing and installing the cotter pin while not exceeding the maximum limit of 60 inch-lbs plus tare. Apply corrosion preventive compound (C–101) and torque seal lacquer (C–049) between the nut, washer, and lower surface of the truss assembly clevis. Update records for your helicopter to indicate the new torque limits on one or both sides.

(A) Within 100 hours TIS after performing paragraph (g)(4)(ii) of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect the assembly for fretting between the washer and truss lower lug mounting surface, inspect the security of the pitch restraint attachment hardware to make sure it does not turn freely, and inspect the torque seal lacquer between the nut and the washer to make sure the torque seal is intact on the RH and LH sides.

(B) If there is any fretting, the pitch restraint attachment hardware turns freely, or a torque seal is broken, remove the cotter pin from service and remove the nut, washer, and bolt. Inspect the bolt for damage and the lower surface of the truss assembly clevis lower lug for fretting damage.

(1) If the bolt has damage, remove the bolt from service.

(2) If the lower surface of the truss assembly clevis lower lug has fretting damage within allowable repair limits, use 400 grit sandpaper (C–423) and rework fretting damage smooth with adjacent surfaces, while removing minimum material. Do not exceed .010 inch (0.254 mm) deep total cumulative amount of material to be removed from the clevis's lower lugs compared to adjacent original surfaces after rework. Clean with acetone (C–316) and let dry. With the acetone dry, visually inspect the clevis lower lug for any cracks.

(i) If there is a crack within allowable repair limits, repair in accordance with FAA-approved procedures. If there is a crack that meets or exceeds allowable repair limits, remove the truss assembly clevis lower lug from service.

(ii) If there is not a crack, apply primer (C–204) to the reworked surface and let dry. With the primer dry, apply final paint (polyurethane topcoat color No. 16492) to the reworked surface.

(3) If the lower surface of the truss assembly clevis lower lug has fretting damage that exceeds allowable repair limits, before further flight, remove the truss assembly clevis lower lug from service.

(C) Install a nut, washer, and bolt with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare. Do not exceed the limit specified in this paragraph plus tare. Install a cotter pin. You may install an additional washer P/N NAS1149E0863P before torquing and installing the cotter pin while not exceeding the maximum limit of 60 inch-lbs plus tare. Apply corrosion preventive compound (C–101) and torque seal lacquer (C–049) between the nut, washer, and lower surface of the truss assembly clevis.

(iii) If there is a gap that is more than 0.020 inch (0.508 mm), before further flight, remove the nut, washer, and bolt from service and repair or replace the truss assembly clevis lower lug in accordance with FAA-approved procedures.

(h) Credit for Previous Actions

You may take credit for the first instance of the actions that are required by paragraphs (g)(1) through (4) of this AD, except not paragraphs (g)(4)(i), (g)(4)(ii)(A) through (C), or (g)(4)(iii) of this AD if you completed the Accomplishment Instructions, Part I of Bell ASB 505–19–12, dated June 27, 2019, before the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(j) Related Information

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email matthew.fuller@faa.gov.

(2) Bell Alert Service Bulletin 505–19–12, dated June 27, 2019, which is not incorporated by reference, contains additional information about the subject of this AD. This service information is available at the contact information specified in paragraphs (k)(3) and (4) of this AD.

(3) The subject of this AD is addressed in Transport Canada AD CF–2019–35, dated October 2, 2019. You may view the Transport Canada AD at <https://www.regulations.gov> in Docket No. FAA–2021–0185.

(k) Material Incorporated by Reference

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

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

(i) Bell Alert Service Bulletin 505–19–12, Revision A, dated July 11, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450–437–2862 or 800–363–8023; fax 450–433–0272; or at <https://www.bellcustomer.com>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

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

Issued on May 20, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–12229 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0445; Project Identifier AD–2021–00268–E; Amendment 39–21588; AD 2021–12–01]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–25–13, which applied to all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines with a certain low-pressure compressor (LPC) 1st-stage fan blade installed. AD 2019–25–13 required an ultrasonic inspection of the affected LPC 1st-stage fan blades and replacement of any affected LPC 1st-stage fan blade that fails the inspection. This AD lowers the initial inspection threshold and requires repetitive ultrasonic inspections on affected LPC 1st-stage fan blades. This AD was prompted by a report of an in-flight shutdown (IFSD) of an engine due to the fracture of multiple LPC 1st-stage fan blades. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 28, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 28, 2021.

The FAA must receive any comments on this AD by July 26, 2021.

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

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493–2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: (800) 565–0140; email: help24@pw.utc.com; website: www.engineallianceportal.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0445.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0445; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7236; fax: (781) 238–7199; email: Stephen.L.Elwin@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2019–25–13, Amendment 39–21011 (84 FR 71770, December 30, 2019), (AD 2019–25–13), for all EA GP7270 and GP7277 model turbofan engines with a certain LPC 1st-stage fan blade installed. AD 2019–25–13 required an ultrasonic inspection of the affected LPC 1st-stage fan blades and replacement of any affected fan blades that fail the inspection. AD 2019–25–13 resulted from a report of an IFSD of an engine due to the fracture of multiple LPC 1st-stage fan blades. After an analysis of these fractures, the

manufacturer determined the fan blades experienced cracks that originated on the internal surface of the convex airfoil and propagated to the point of failure. The cracks originated in a microtexture area that can result in a low-cycle fatigue debit that may allow a crack to initiate and propagate to failure. The FAA issued AD 2019–25–13 to prevent failure of the fan blade.

Actions Since AD 2019–25–13 Was Issued

Since the FAA issued AD 2019–25–13, the manufacturer performed analysis of a fractured LPC 1st-stage fan blade and determined the fracture resulted from a fatigue crack. The manufacturer determined that repetitive ultrasonic inspection for cracks on the LPC 1st-stage fan blade convex airfoil is necessary to decrease the risk of fracture event. As a result of this analysis, the manufacturer published EA Alert Service Bulletin (SB) EAGP7–A72–444, dated November 18, 2020. This service information specifies lower initial inspection thresholds for performing ultrasonic inspections of affected LPC 1st-stage fan blades and contains procedures for performing repetitive ultrasonic inspections of affected LPC 1st-stage fan blades. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EA Alert SB EAGP7–A72–444, dated November 18, 2020. The Alert SB describes the inspection thresholds and procedures for performing an ultrasonic inspection of the LPC 1st-stage fan blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires initial and repetitive ultrasonic inspections of the affected LPC 1st-stage fan blades and replacement of any LPC 1st-stage fan blade that fails the inspection.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

The FAA has found the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from any U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2021–0445 and Project Identifier AD–2021–00268–E” 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 final rule because of those comments.

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

Confidential Business Information

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 0 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform ultrasonic inspection for one set of 1st—stage LPC blades.	8 work-hours × \$85 per hour = \$680	\$0	\$680	\$0

The FAA estimates the following costs to do any necessary replacements

that would be required based on the results of the inspection. The agency has

no way of determining the number of

aircraft that might need these replacements.

ON-CONDITION COSTS			
Action	Labor cost	Parts cost	Cost per product
Replace 1st-stage LPC fan blade	4 work-hours × \$85 per hour = \$340	\$190,000	\$190,340

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.
- List of Subjects in 14 CFR Part 39
- Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.
- The Amendment
- Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:
- PART 39—AIRWORTHINESS DIRECTIVES
- 1. The authority citation for part 39 continues to read as follows:
- Authority: 49 U.S.C. 106(g), 40113, 44701.
- § 39.13 [Amended]
- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive 2019–25–13, Amendment 39–21011 (84 FR 71770, December 30, 2019); and
- b. Adding the following new airworthiness directive:
- 2021–12–01 Engine Alliance: Amendment 39–21588; Docket No. FAA–2021–0445; Project Identifier AD–2021–00268–E.
- (a) Effective Date
- This airworthiness directive (AD) is effective June 28, 2021.

- (b) Affected ADs
- This AD replaces AD 2019–25–13, Amendment 39–21011 (84 FR 71770, December 30, 2019).
- (c) Applicability
- This AD applies to Engine Alliance (EA) GP7270 and GP7277 model turbofan engines with low-pressure compressor (LPC) 1st-stage fan blades, part number (P/N) 5700531, 5702931, 5702931CL1, or 5702931CL2, installed.
- (d) Subject
- Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.
- (e) Unsafe Condition
- This AD was prompted by a report of an in-flight shutdown of an engine due to the fracture of multiple LPC 1st-stage fan blades. The FAA is issuing this AD to prevent failure of the LPC 1st-stage fan blades. The unsafe condition, if not addressed, could result in uncontained fan blade release, damage to the engine, and damage to the airplane.
- (f) Compliance
- Comply with this AD within the compliance times specified, unless already done.
- (g) Required Actions
- (1) Within the compliance time specified in Table 1 to paragraph (g)(1) of this AD, perform an ultrasonic inspection of the LPC 1st-stage fan blades using the Accomplishment Instructions, “For Fan Blades Installed In An Engine,” paragraph 1, or “For Fan Blades Not Installed In An Engine,” paragraph 1, as applicable, of EA Alert Service Bulletin (SB) EAGP7–A72–444, dated November 18, 2020.

Table 1 to Paragraph (g)(1)

Fan Blade Flight Cycles	Compliance Time
Fewer than 2,250 flight cycles since new (CSN) on the effective date of this AD.	Before exceeding 2,500 flight CSN.
2,250 flight CSN or greater as of the effective date of this AD, but fewer than 3,250 CSN on January 14, 2020 (the effective date of AD 2019-25-13).	Before exceeding 250 flight cycles from the effective date of this AD.
3,250 flight CSN or greater on January 14, 2020.	Within 250 flight cycles since January 14, 2020 or before further flight, whichever occurs later.

(2) Thereafter, at intervals not to exceed 800 flight cycles since last inspection, perform an ultrasonic inspection of the LPC 1st-stage fan blades using the Accomplishment Instructions, "For Fan Blades Installed In An Engine," paragraph 1, or "For Fan Blades Not Installed In An Engine," paragraph 1, as applicable, of EA Alert SB EAGP7-A72-444, dated November 18, 2020.

(3) If an ultrasonic inspection of an LPC 1st-stage fan blade results in a rejectable ultrasonic indication, remove the LPC 1st-stage fan blade from service and replace with a part eligible for installation before further flight.

Note 1 to paragraph (g)(3): Guidance on determining a rejectable ultrasonic indication can be found in GP7000 1st Stage LPC Rotor (Fan) Blade Assembly Airfoil Ultrasonic Inspection for Cracks (Fan Blade Installed or Uninstalled), NDIP-1205, Revision C, dated September 15, 2020.

(h) Credit for Previous Actions

You may take credit for the ultrasonic inspection required by paragraph (g)(1) of this AD if you performed the inspection before the effective date of this AD using GP7000 1st Stage LPC Rotor (Fan) Blade Assembly Airfoil Ultrasonic Inspection for Cracks (Fan Blade installed or uninstalled), NDIP-1205, Revision B, dated September 27, 2019, or an earlier version.

(i) No Reporting Requirement

The reporting requirements contained within NDIP-1205 are not required by this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. Information may be emailed to: ANE-AD-AMOC@faa.gov.

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

(k) Related Information

For more information about this AD, contact Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7236; fax: (781) 238-7199; email: Stephen.L.Elwin@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Alert Service Bulletin EAGP7-A72-444, dated November 18, 2020.

(ii) [Reserved]

(3) For EA service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: (800) 565-0140; email: help24@pw.utc.com; website: www.engineallianceportal.com.

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

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

Issued on May 25, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-12302 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0140; Project Identifier MCAI-2020-01531-T; Amendment 39-21582; AD 2021-11-20]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330-200, A330-300, A340-200, A340-300, A340-500, and A340-600 series airplanes. This AD was prompted by reports that, for certain lower deck mobile crew rest (LDMCR) units, the connection of a certain halon outlet tube to the outlet of a certain fire extinguisher bottle may be incorrect. This AD requires replacing each affected halon outlet tube with a flexible hose, 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 is effective July 16, 2021.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of July 16, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact 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-2021-0140.

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-2021-0140; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3229; email vladimir.ulyanov@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0255, dated November 13, 2020 (EASA AD 2020-0255) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A330-201, -202, -203, -223, -243, -301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes; and Model A340-211, -212, -213, -311, -312, -313, -541, -542, -642, and -643 airplanes. Model A340-542 and A340-643 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.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. The NPRM published in the **Federal Register** on March 11, 2021 (86 FR 13836). The NPRM was prompted by reports that, for certain LDMCR units, the connection of a certain halon outlet tube to the outlet of a certain fire extinguisher bottle may be incorrect. The NPRM proposed to require replacing each affected halon outlet tube with a flexible hose, as specified in EASA AD 2020–0255.

The FAA is issuing this AD to address the possible incorrect connection of the halon outlet tube as described previously, which, in case of a fire inside the LDMCR, could lead to disconnection of the tube, possibly resulting in reduced concentration of

fire suppressing agent at any location inside the LDMCR. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA), stated that it supports the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 14 CFR Part 51

EASA AD 2020–0255 describes procedures for replacing each affected halon outlet tube in the LDMCR with a flexible hose. 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.

Costs of Compliance

The FAA estimates that this AD affects 123 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
4 work-hours × \$85 per hour = \$340	\$(*)	\$340	\$41,820

* The FAA has received no definitive data on which to base the parts cost estimates for the replacements specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. 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

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

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:

2021–11–20 Airbus SAS: Amendment 39–21582; Docket No. FAA–2021–0140; Project Identifier MCAI–2020–01531–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 16, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (6) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0255, dated November 13, 2020 (EASA AD 2020–0255).

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(3) Model A340–211, –212, and –213 airplanes.

(4) Model A340–311, –312, and –313 airplanes.

- (5) Model A340–541 airplanes.
 (6) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports that, for certain lower deck mobile crew rest (LDMCR) units, the connection of a certain halon outlet tube to the outlet of a certain fire extinguisher bottle may be incorrect. The FAA is issuing this AD to address this condition, which, in case of a fire inside the LDMCR, could lead to disconnection of the tube, possibly resulting in reduced concentration of fire suppressing agent at any location inside the LDMCR.

(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 2020–0255.

(h) Exceptions to EASA AD 2020–0255

(1) Where EASA AD 2020–0255 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2020–0255 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0255 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 responsible Flight Standards 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 (k) 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 responsible Flight Standards 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)*: Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those 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.

(k) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email vladimir.ulyanov@faa.gov.

(l) 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 2020–0255, dated November 13, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0255, contact 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–2021–0140.

(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 May 20, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–12175 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2020–1113; Project Identifier MCAI–2020–00893–T; Amendment 39–21580; AD 2021–11–18]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–03–10, which applied to all Airbus SAS Model A300 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). AD 2019–03–10 required repetitive detailed visual inspections of the main landing gear (MLG) leg components and replacement of the MLG leg if cracked components are found. This AD continues to require the actions required by AD 2019–03–10. For certain airplanes, this AD also requires modification of the MLG hinge arm by installing improved MLG hinge arm/barrel pins; an out-of-roundness check of removed pins; repetitive inspections of any affected pins and the associated connecting rod bushes, and replacement of the MLG leg if cracked components are found; and installation of an improved spacer; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by reports of cracks in MLG leg components and a determination that additional actions (including inspections, modifications, and checks) are needed to address the unsafe condition. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 16, 2021.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact 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>.

For Safran material that will be IBR in this AD, contact Safran Landing Systems, One Carbon Way, Walton, KY 41094; telephone 859-525-8583; fax 859-485-8827; internet <https://www.safran-landing-systems.com>.

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-2020-1113.

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-2020-1113; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3225; email dan.rodina@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0145, dated July 1, 2020 (EASA AD 2020-0145) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A300 series airplanes; Model A300-600 series airplanes; and Model A300F4-608ST airplanes. EASA AD 2020-0145 supersedes EASA AD 2018-0170, dated August 6, 2018 (which corresponds to FAA AD 2019-03-10, Amendment 39-15562 (84 FR 5595, February 22, 2019) (AD 2019-03-10)). Model A300F4-608ST 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.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to supersede AD 2019-03-10. AD 2019-03-10 applied to all Airbus SAS Model A300 and A300-600 series airplanes. The NPRM published in the **Federal Register** on December 8, 2020 (85 FR 78971). The NPRM was prompted by reports of cracks in MLG leg components, and a determination that additional actions (including inspections, modifications, and out-of-roundness checks) are needed to address the unsafe condition. The NPRM proposed to continue to require the actions required by AD 2019-03-10. For certain airplanes, this AD also requires modification of the MLG hinge arm by installing improved MLG hinge arm/barrel pins; an out-of-roundness check of removed pins; repetitive inspections of any affected pins and the associated connecting rod bushes, and replacement of the MLG leg if cracked components are found; and installation of an improved spacer; as specified in an EASA AD.

The FAA is issuing this AD to address cracking of certain components in the MLG leg, which could result in an MLG collapse, and consequent damage to the airplane and injury to the airplane occupants. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

The Air Line Pilots Association, International (ALPA) and an anonymous commenter indicated support for the NPRM.

Request To Clarify Inspection Threshold for Certain Airplanes

United Parcel Service (UPS Airlines) asked that the proposed AD be revised to add a statement to clarify that the general visual inspection (GVI) for Group 2 airplanes begins within 30 months after the effective date of the FAA AD. UPS Airlines stated that it has been accomplishing Airbus Service Bulletin A300-32-6120 at gear overhaul, which replaces the old hinge arm barrel pin with a new hinge arm barrel pin, prior to release of Airbus Service Bulletin A300-32-6121. UPS Airlines further pointed out that Airbus Service Bulletin A300-32-6121 was released after Airbus Service Bulletin A300-32-6120 (pin replacement), and added installation of a new spacer during gear overhaul. UPS Airlines added that EASA AD 2020-0145 does

not have clear instructions for the initial inspection start date for airplanes with modifications accomplished using Airbus Service Bulletin A300-32-6120 that have not accomplished Airbus Service Bulletin A300-32-6121. Further, UPS Airlines asserted that this request is in line with the 30-month pin replacement threshold for airplanes equipped with the older pin. Airplanes with the newer pins installed in the past three years without the spacer installation, UPS Airlines also asserted, are less prone to any safety or operational concerns than those with the older pins.

The FAA does not agree with the commenter's request. In developing an appropriate compliance time for this AD, the FAA considered the urgency associated with the subject unsafe condition as well as the recommendations of the manufacturer. The compliance time for the initial GVI for Group 2 airplanes is "Within 30 months after pin replacement," as specified in EASA AD 2020-0145. Airbus Service Bulletin A300-32-6120, which provides instructions for pin replacement, was issued September 24, 2019. Therefore, the earliest possible compliance time for the inspection would be 30 months from September 24, 2019. The FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2020-0145 describes procedures for repetitive detailed visual inspections of the MLG leg components and replacement of the MLG leg if cracked components are found. EASA AD 2020-0145 also describes procedures, for certain airplanes, for modification of the MLG hinge arm by installing improved pins, which would terminate the repetitive detailed inspections required by AD 2019-03-10; an out-of-roundness check of removed pins; repetitive inspections of affected pins and the associated connecting rod bushes for cracking, and replacement of the MLG leg if cracked

components are found; and installation of an improved spacer, which would terminate the repetitive pin and rod bushes inspections. EASA AD 2020–0145 also describes procedures for reporting results of the out-of-roundness check to Safran.

Safran Landing Systems has issued Safran Service Bulletin 470–32–840,

dated December 3, 2019. This service information describes procedures for inspecting the hinge arm pins of the MLG barrel to detect local out-of-roundness.

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.

Costs of Compliance

The FAA estimates that this AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2019–03–10.	1 work-hour × \$85 per hour = \$85, per inspection cycle.	\$0	\$85, per inspection cycle.	\$10,880, per inspection cycle.
New modifications	180 work-hours × \$85 per hour = \$15,300	17,993	33,293	4,261,504.
New inspection	1 work-hour × \$85 per hour = \$85	0	85	10,880.
New out-of-roundness check.	4 work-hours × \$85 per hour = \$340	0	340	43,520.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement

in this AD. The average labor rate is \$85 per hour. Based on these figures, the FAA estimates the cost of reporting the

inspection results on U.S. operators to be \$85, or \$85 per product.

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
20 work-hours × \$85 per hour = \$1,700 per MLG	\$3,400,000 per MLG	\$3,401,700 per MLG.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

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:
 - a. Removing Airworthiness Directive (AD) 2019–03–10, Amendment 39–19562 (84 FR 5595, February 22, 2019); and
 - b. Adding the following new AD:

2021–11–18 Airbus SAS: Amendment 39–21580; Docket No. FAA–2020–1113; Project Identifier MCAI–2020–00893–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 16, 2021.

(b) Affected ADs

This AD replaces AD 2019–03–10, Amendment 39–19562 (84 FR 5595, February 22, 2019) (AD 2019–03–10).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (5) of this AD.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(5) Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of cracks in main landing gear (MLG) leg components, and a determination that additional actions (including inspections, modifications, and out-of-roundness checks) are needed to address the unsafe condition. The FAA is issuing this AD to address cracking of certain components in the MLG leg, which could result in an MLG collapse, and consequent damage to the airplane and injury to the airplane occupants.

(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 2020–0145, dated July 1, 2020 (EASA AD 2020–0145).

(h) Exceptions to EASA AD 2020–0145

(1) Where EASA AD 2020–0145 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2020–0145 refers to the effective date of EASA AD 2018–0170, this AD requires using March 29, 2019 (the effective date of AD 2019–03–10).

(3) The “Remarks” section of EASA AD 2020–0145 does not apply to this AD.

(4) Paragraph (3) of EASA AD 2020–0145 specifies to “send all removed pins for an out-of-roundness check.” For this AD, do an inspection of each pin for out-of-roundness, in accordance with Safran Service Bulletin 470–32–840, dated December 3, 2019.

(5) Paragraph (3) of EASA AD 2020–0145 specifies to report inspection results to Safran within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(5)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(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 responsible Flight Standards 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 responsible Flight Standards 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)*: Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2020–0145 that contains RC procedures or tests that are identified as RC, those 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.

(4) *Paperwork Reduction Act Burden Statement*: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other

aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email dan.rodina@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 2020–0145, dated July 1, 2020.

(ii) Safran Service Bulletin 470–32–840, dated December 3, 2019.

(3) For EASA AD 2020–0145, contact 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) For Safran service information, contact Safran Landing Systems, One Carbon Way, Walton, KY 41094; telephone 859–525–8583; fax 859–485–8827; internet <https://www.safran-landing-systems.com>.

(5) 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–2020–1113.

(6) 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 May 20, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–12172 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2019-0113; Product Identifier 2017-SW-140-AD; Amendment 39-21584; AD 2021-11-22]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2016-11-21 for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model EC135P1, EC135P2, EC135P2+, EC135T1, EC135T2, and EC135T2+ helicopters. AD 2016-11-21 required revising the life limit of certain parts and removing each part that has reached its life limit. This AD continues to require revising the life limits for certain parts and removing each part that has reached or exceeded its life limit and expands the applicability to include Model EC135P3 and EC135T3 helicopters. This AD was prompted by the certification of new helicopter models since AD 2016-11-21 was issued. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 16, 2021.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972-641-0000 or 800-232-0323; fax 972-641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0113.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No.

FAA-2019-0113; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any service information that is incorporated by reference, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email matthew.fuller@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016-11-21, Amendment 39-18548 (81 FR 36137, June 6, 2016), (AD 2016-11-21) which applied to Airbus Helicopters Model EC135P1, EC135P2, EC135P2+, EC135T1, EC135T2, and EC135T2+ helicopters. The NPRM published in the **Federal Register** on March 8, 2021 (86 FR 13237). In the NPRM, the FAA proposed to require, before further flight, establishing a life limit for the tail rotor hub body of 27,400 hours time-in-service (TIS) or using Airbus Helicopters service information if the history of the tail rotor hub body is not known or cannot be identified. The NPRM also proposed to require establishing life limits for certain swashplate and mixing lever gear unit parts in the Airworthiness Limitations Section (ALS) of the existing maintenance manual for your helicopter, and recording the revised life limit on the component history card or equivalent record. Additionally, the NPRM proposed to require continuing to record the life limit of certain parts that have not reached their life limit. Finally, the NPRM proposed to require removing from service any part that reached or exceeded its life limit.

The NPRM was prompted by EASA AD 2017-0243, dated December 6, 2017 (EASA AD 2017-0243), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition Airbus Helicopters Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+,

EC135T3, EC635P2+, EC635P3, EC635T1, EC635T2+, and EC635T3 helicopters. EASA AD 2017-0243 superseded EASA AD 2013-0178, dated August 7, 2013 (EASA AD 2013-0178), which was prompted by Airbus Helicopters revising the airworthiness limitations for the Model EC135 and EC635 helicopters' type design as published in the Master Servicing Manual (MSM) EC135 Chapter 04—ALS documents. Revision 14 of the MSM contains these new airworthiness limitations. EASA stated that failure to comply with these limitations could result in failure of a critical part, which could result in loss of control of the helicopter. Accordingly, EASA AD 2013-0178 required revising the ALS to include the new life limits and replacing each part that has reached its life limit. Superseding EASA AD 2017-0243 expands the applicability to include Airbus Helicopters Model EC135P3, EC135T3, EC635P3, and EC635T3 helicopters. New life limits were also added for some parts.

Comments

The FAA received comments from one commenter. The following presents the comments received on the NPRM and the FAA's response.

The individual commented that the NPRM sets the life limit for the hinged support part number (P/N) L671M7003210 at 8,400 hours TIS but that the life limit of this component is at 19,000 hours per ALS Rev 01 chapter 04-10-00. The individual also commented that the NPRM sets the life limit for the bolt P/N L671M7001220 at 8,400 hours TIS but that the life limit of this component is at 19,000 hours per ALS Rev 01 chapter 04-10-00. The FAA agrees and has changed this AD to the revise the life limit to 19,000 hours TIS for the hinged support and the bolt.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed except for increasing the life limit for the hinged support and bolt. These changes will neither increase the scope of the AD nor increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin ASB EC135-04A-012, Revision 0, dated September 11, 2017, which specifies incorporating life limits for the tail rotor hub body into the tail rotor hub log card and into the list of life-limited parts. Airbus Helicopters reports the addition of the tail rotor hub body into the tail rotor hub log card was prompted by a new, recently manufactured, serial-numbered hub.

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.

Differences Between This AD and the EASA AD

The EASA AD applies to Model EC635P2+, EC635P3, EC635T2+, and EC635T3 helicopters, whereas this AD does not because these model helicopters are not FAA type-certificated. The EASA AD requires revising the Aircraft Maintenance Program with new or revised life limitations within 12 months after the EASA AD's effective date. This AD requires revising the life limit for certain parts in the ALS of the existing maintenance manual for your helicopter before further flight.

Costs of Compliance

The FAA estimates that this AD affects 272 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at \$85 per work-hour.

Revising the component history card or equivalent record will take about 2 work-hours, for an estimated cost of \$170 per helicopter and \$46,240 for the U.S. fleet.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of

that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive (AD) 2016-11-21, Amendment 39-18548 (81 FR 36137, June 6, 2016); and
 - b. Adding the following new AD:

2021-11-22 Airbus Helicopters

Deutschland GmbH: Amendment 39-21584; Docket No. FAA-2019-0113; Product Identifier 2017-SW-140-AD.

(a) Applicability

This airworthiness directive (AD) applies Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters, certificated in any category.

(b) Unsafe Condition

The FAA is issuing this AD to prevent certain parts from remaining in service beyond their fatigue life, resulting in failure of the part and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD replaces AD 2016-11-21, Amendment 39-18548 (81 FR 36137, June 6, 2016).

(d) Effective Date

This AD is effective July 16, 2021.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Before further flight, establish a life limit for the tail rotor hub body (hub body), part number (P/N) L642A2003102, of 27,400 hours time-in-service (TIS). If you cannot determine the hub body's TIS, follow the instructions in Table 1, Examples and Calculations, Effectivity: The history of the hub body is not known or can't be identified, in Airbus Helicopters Alert Service Bulletin ASB EC135-04A-012, Revision 0, dated September 11, 2017, except where the service information specifies that you contact the manufacturer, you are required to remove the part from service instead.

(2) Before further flight, revise the life limit for each part listed in paragraphs (f)(2)(i) and (ii) of this AD in the Airworthiness Limitations Section (ALS) of the existing maintenance manual for your helicopter and record the revised life limit on the component history card or equivalent record as follows:

- (i) For swashplate parts:
 - (A) The life limit for the ring (control ring), P/N L623M2001213, is 10,700 hours TIS.
 - (B) The life limit for the cardan ring (two-part), P/N L623M2005205, is 14,300 hours TIS.
 - (C) The life limit for the bolt (control ring), P/N L671M7001215, is 14,300 hours TIS.
 - (D) The life limit for the bolt (sliding sleeve), P/N L623M2006206 and P/N L623M2006213, is 14,300 hours TIS.
- (ii) For mixing lever gear unit parts:
 - (A) The life limit for the forked lever assembly, P/N L671M3012102, is 10,400 hours TIS.
 - (B) The life limit for the hinged support, P/N L671M7003210, is 19,000 hours TIS.
 - (C) The life limit for the bolt, P/N L671M7001220, is 19,000 hours TIS.

(3) Before further flight, remove from service any part listed in paragraphs (f)(1) and (2) of this AD that has reached or exceeded its revised life limit.

(4) Thereafter, for any part listed in paragraphs (f)(1) and (2) of this AD that has not reached or exceeded its life limit, continue to record the life limit of the part on its component history card or equivalent record and remove any part listed in paragraphs (f)(1) and (2) of this AD from service before the part has reached or exceeded its revised life limit.

(g) Special Flight Permits

Special flight permits are limited to a onetime flight to a maintenance facility to replace a part that has reached its life limit.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(i) Additional Information

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email matthew.fuller@faa.gov.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2017-0243, dated December 6, 2017. You may view the EASA AD at <https://www.regulations.gov> in Docket No. FAA-2019-0113.

(j) Subject

Joint Aircraft Service Component (JASC)
Code: 6400, Tail Rotor System.

(k) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin ASB EC135-04A-012, Revision 0, dated September 11, 2017.

(ii) [Reserved]

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972-641-0000 or 800-232-0323; fax 972-641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110.

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

Issued on May 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021-12228 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

**[Docket No. FAA-2021-0325; Airspace
Docket No. 21-AGL-20]**

RIN 2120-AA66

Amendment and Revocation of Class E Airspace; Michigan, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area extending upward from 1,200 feet above the surface over the State of Michigan and removes overlapping and redundant enroute domestic airspace areas within these boundaries. This action corrects, simplifies, and closes gaps in the Class E airspace extending upward from 1,200 feet above the surface over the State of Michigan; provides transitional airspace to support instrument flight rule (IFR) operations to and from the terminal and enroute environments within the state; and improves air traffic control services over the state.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT:
Jeffrey Claypool, Federal Aviation

Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace area extending upward from 1,200 feet above the surface over the State of Michigan and removes the enroute domestic airspace at Upper Peninsula, MI; Iron Mountain, MI; and Newberry, MI, which become redundant, to correct, simplify, and close gaps in the Class E airspace extending upward from 1,200 feet above the surface over the State of Michigan; provide transitional airspace to support IFR operations to and from the terminal and enroute environments within the state; and improve air traffic services over the state.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (86 FR 20469; April 20, 2021) for Docket No. FAA-2021-0325 to amend the Class E airspace area extending upward from 1,200 feet above the surface over the State of Michigan and remove overlapping and redundant enroute domestic airspace areas within these boundaries. 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 and 6006, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71: Amends the Class E airspace area extending upward from 1,200 feet above the surface within the boundary of the State of Michigan by removing the limitation of “south of parallel 45°45’” from the airspace legal description; and

Removes the enroute domestic airspace area over the Upper Peninsula, MI; Iron Mountain, MI; and Newberry, MI, as they are redundant with the amendment of the Class E airspace area extending upward from 1,200 feet above the surface within the boundary of the State of Michigan.

This action corrects, simplifies, and closes gaps in the Class E airspace extending upward from 1,200 feet above the surface over the State of Michigan; provides transitional airspace to support IFR operations to and from the terminal and enroute environments within the state; and improves air traffic control services over the State of Michigan.

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

Regulatory Notices and Analyses

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

Environmental Review

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

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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

AGL MI E5 Michigan, MI [Amended]

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of Michigan.

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

AGL MI E6 Upper Peninsula, MI [Removed]

AGL MI E6 Iron Mountain, MI [Removed]

AGL MI E6 Newberry, MI [Removed]

Issued in Fort Worth, Texas, on June 7, 2021.

Martin A. Skinner,

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

[FR Doc. 2021–12184 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0221; Airspace Docket No. 21–AEA–5]

RIN 2120–AA66

Amendment of Class E Airspace; Dubois, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Dubois Regional Airport, Dubois, PA. This action is the result of an airspace review caused by the decommissioning of the Clarion VHF omnidirectional range (VOR) navigation aids as part of the VOR Minimum Operational Network (MON) Program. The name for the Penn Highlands Healthcare-Dubois Heliport is also being updated to coincide with the FAA’s aeronautical database.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Dubois Regional Airport, Dubois, PA, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 17754; April 6, 2021) for Docket No. FAA–2021–0221 to amend the Class E airspace extending upward from 700 feet above the surface at Dubois Regional Airport, Dubois, PA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 7.3-mile (decreased from a 9.2-mile) radius of Dubois Regional Airport; adds an extension 2.1 miles either side of the 062° bearing from the Dubois RGNL: RWY 25–LOC extending from the 7.3-mile radius of Dubois Regional Airport to 9.2 miles northeast of the Dubois Regional Airport; and updates the name of Penn Highlands Healthcare-Dubois Heliport (previously Penn Highlands Healthcare-Dubois

Heliport Point In Space Coordinates) to coincide with the FAA's aeronautical database and the airspace reference point.

This action is the result of an airspace review caused by the decommissioning of the Clarion VOR, which provided navigation information for the instrument procedures these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

AEA PA E5 Dubois, PA [Amended]

Dubois Regional Airport, PA
(Lat. 41°10'42" N, long. 78°53'55" W)
Dubois RGNL: RWY 25–LOC
(Lat. 41°10'26" N, long. 78°54'34" W)
Penn Highlands Healthcare-Dubois Heliport
(Lat. 41°06'52" N, long. 78°46'26" W)

That airspace extending upward from 700 feet above the surface within an 7.3-mile radius of the Dubois Regional Airport, and within 2.1 miles either side of the 062° bearing from Dubois RGNL: RWY 25–LOC extending from the 7.3-mile radius to 9.2 miles northeast of the Dubois Regional Airport, and that airspace within a 6-mile radius of the Penn Highlands Healthcare-Dubois Heliport.

Issued in Fort Worth, Texas, on June 7, 2021.

Martin A. Skinner,

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

[FR Doc. 2021–12218 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0176; Airspace
Docket No. 21–ACE–8]

RIN 2120–AA66

Amendment of Class D and E Airspace; Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace at Sioux Gateway Airport/Brigadier General Bud Day Field, Sioux City, IA. This action is the result of an airspace review caused by the decommissioning of the Sioux City VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The name and geographic coordinates of the airport are also being

updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace, the Class E surface airspace, and the Class E airspace extending upward from 700 feet above the surface at Sioux Gateway Airport/Brigadier General Bud Day Field, Sioux City, IA, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 15445; March 23, 2021) for Docket No. FAA-2021-0176 to amend the amend the Class D and Class E airspace at Sioux Gateway Airport/

Brigadier General Bud Day Field, Sioux City, IA. 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 and E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71: Amends the Class D airspace at Sioux Gateway Airport/Brigadier General Bud Day Field, Sioux City, IA, by adding an extension 1 mile each side of the 001° bearing from the airport extending from the 4.3-mile radius to 4.4 miles north of the airport; updates the name (previously Sioux Gateway/Col. Bud Day Field) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; removes the cities associated with the airports to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and updates the outdated term "Airport/Facility Directory" to "Chart Supplement";

Amends the Class E surface airspace at Sioux Gateway Airport/Brigadier General Bud Day Field by adding an extension 1 mile each side of the 001° bearing from the airport extending from the 4.3-mile radius to 4.4 miles north of the airport; updates the name (previously Sioux Gateway/Col. Bud Day Field) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; removes the cities associated with the airports to comply with changes to FAA Order 7400.2M; and updates the outdated term "Airport/Facility Directory" to "Chart Supplement";

And amends the Class E airspace extending upward from 700 feet above the surface at Sioux Gateway Airport/

Brigadier General Bud Day Field by removing the Sioux City VORTAC and associated extension from the airspace legal description; amends the extension northwest of the airport to within 3.9 miles (decreased from 4 miles) either side of the 316° (previously 001°) bearing from the Sioux Gateway/Brig. General Bud Day FLD: RWY 13-LOC (previously Sioux Gateway Airport/Col. Bud Day Field) extending from the 6.8-mile radius of the Sioux Gateway Airport/Brigadier General Bud Day Field to 14.4 miles northwest of the Sioux Gateway Airport/Brigadier General Bud Day Field; adds an extension 3.9-miles each side of the 316° bearing from the airport extending from the 6.8-mile radius of the airport to 7.1 miles northwest of the airport; removes the city associated with the airport to comply with changes to FAA Order 7400.2M; and updates the name (previously Sioux Gateway Airport/Col. Bud Day Field) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Sioux City VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA

Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE IA D Sioux City, IA [Amended]

Sioux Gateway Airport/Brigadier General Bud Day Field, IA

(Lat. 42°24′09″ N, long. 96°23′05″ W)

Martin Field, NE

(Lat. 42°27′15″ N, long. 96°28′21″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Sioux Gateway Airport/Brigadier General Bud Day Field excluding that airspace within a 1-mile radius of Martin Field, and within 1 mile either side of the 001° bearing from the Sioux Gateway Airport/Brigadier General Bud Day Field extending from the 4.3-mile radius of Sioux Gateway Airport/Brigadier General Bud Day Field to 4.4 miles north of the Sioux Gateway Airport/Brigadier General Bud Day Field. 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 6002 Class E Surface Airspace.

* * * * *

ACE IA E2 Sioux City, IA [Amended]

Sioux Gateway Airport/Brigadier General Bud Day Field, IA

(Lat. 42°24′09″ N, long. 96°23′05″ W)

Martin Field, NE

(Lat. 42°27′15″ N, long. 96°28′21″ W)

That airspace within a 4.3-mile radius of Sioux Gateway Airport/Brigadier General Bud Day Field, excluding that airspace within a 1-mile radius of Martin Field, and within 1 mile either side of the 001° bearing from the Sioux Gateway Airport/Brigadier General Bud Day Field extending from the 4.3-mile radius of Sioux Gateway Airport/Brigadier General Bud Day Field to 4.4 miles north of the Sioux Gateway Airport/Brigadier General Bud Day Field. 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.

* * * * *

ACE IA E5 Sioux City, IA [Amended]

Sioux Gateway Airport/Brigadier General Bud Day Field, IA

(Lat. 42°24′09″ N, long. 96°23′05″ W)

Sioux Gateway/Brig. General Bud Day FLD: RWY 13–LOC

(Lat. 42°23′21″ N, long. 96°22′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Sioux Gateway Airport/Brigadier General Bud Day Field, and within 3.9 miles each side of the 316° bearing from Sioux Gateway/Brig. General Bud Day FLD: RWY 13–LOC extending from the 6.8-mile radius of the Sioux Gateway Airport/Brigadier General Bud Day Field to 14.4 miles northwest of the Sioux Gateway Airport/Brigadier General Bud Day Field, and within 3.9 miles each side of the 316° bearing from the airport extending from the 6.8-mile radius of the airport to 7.1 miles northwest of the airport.

Issued in Fort Worth, Texas, on June 7, 2021.

Martin A. Skinner,

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

[FR Doc. 2021–12219 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0113; Airspace Docket No. 21–AEA–2]

RIN 2120–AA66

Establishment of Class E Airspace; Doylestown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700

feet above the surface at Doylestown Airport, Doylestown, PA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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 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 establishes Class E airspace extending upward from 700 feet above the surface at Doylestown Airport, Doylestown, PA, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 13670, March 10, 2021) for Docket No. FAA–2021–0113 to establish Class E airspace extending upward from 700 feet above the surface at Doylestown Airport, Doylestown, PA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport.

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Doylestown Airport, Doylestown, PA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. These changes are necessary for continued safety and management of IFR operations in the area.

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 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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

AEA PA E5 Doylestown, PA [New]

Doylestown Airport, PA
(Lat. 40°19'59" N, long. 75°07'20" W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Doylestown Airport, and within 3.9 miles each side of the 050° bearing from the airport, extending from the 7.6-mile radius to 13.8 miles northeast of the airport.

Issued in College Park, Georgia, on June 7, 2021.

Andree C. Davis,

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

[FR Doc. 2021–12274 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1195; Airspace
Docket No. 20–ANE–11]

RIN 2120–AA66

Establishment of Class E Airspace; Framingham, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at MSP GHQ Heliport, Framingham, MA, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area. **DATES:** Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This 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 establishes Class E airspace extending upward from 700 feet above the surface at MSP GHQ Heliport, Framingham, MA, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 5044, January 19, 2021) for Docket No. FAA-2020-1195 to establish Class E airspace extending upward from 700 feet above the surface at MSP GHQ Heliport (Massachusetts State Police HQ), Framingham, MA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport.

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above

the surface at MSP GHQ Heliport (Massachusetts State Police HQ), Framingham, MA, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at MSP GHQ Heliport. These changes are necessary for continued safety and management of IFR operations in the area.

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 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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ANE MA E5 Framingham, MA [New]

MSP GHQ Heliport, MA
(Lat. 42°17'48" N, long. 71°24'57" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of MSP GHQ Heliport.

Issued in College Park, Georgia, on June 7, 2021.

Andree C. Davis,

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

[FR Doc. 2021-12275 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2021-227; Airspace
Docket No. 21-AGL-16]

RIN 2120-AA66

Amendment of Class E Airspace; Huron, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Huron Regional Airport, Huron, SD. This action is the result of an airspace review caused by the decommissioning of the Huron VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (86 FR 18487; April 9, 2021) for Docket No. FAA-2021-0227 to amend the Class E airspace at Huron Regional Airport, Huron, SD. 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 6002 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71: Amends the Class E surface airspace to within a 4.2-mile (decreased from a 4.5-mile) radius of Huron Regional Airport, Huron, SD; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And amends the Class E airspace extending upward from 700 feet above the surface at Huron Regional Airport by removing the Huron VORTAC, Beady NDB, and all extensions from the airspace legal description as they are no longer required; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Huron VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL SD E2 Huron, SD [Amended]

Huron Regional Airport, SD
(Lat. 44°23'07" N, long. 98°13'43" W)

Within a 4.2-mile radius of Huron Regional Airport.

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

* * * * *

AGL SD E5 Huron, SD [Amended]

Huron Regional Airport, SD
(Lat. 44°23'07" N, long. 98°13'43" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Huron Regional Airport.

Issued in Fort Worth, Texas, on June 7, 2021.

Martin A. Skinner,

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

[FR Doc. 2021-12216 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2020–1164; Airspace
Docket No. 20–ANE–8]

RIN 2120–AA66

**Establishment of Class E Airspace;
Newburyport, MA**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Anna Jaques Hospital Heliport, Newburyport, MA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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 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 establishes Class E airspace extending upward from 700 feet above the surface at Anna Jaques Hospital Heliport, Newburyport, MA, to support instrument flight rule operations at this heliport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 3893, January 15, 2021) for Docket No. FAA–2020–1164 to establish Class E airspace extending upward from 700 feet above the surface at Anna Jaques Hospital Heliport, Newburyport, MA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport.

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

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

**Availability and Summary of
Documents for Incorporation by
Reference**

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

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Anna Jaques Hospital Heliport, Newburyport, MA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Subsequent to publication of the Notice of Proposed Rulemaking, the FAA found the geographic coordinates of Anna

Jaques Hospital Heliport, were incorrect. This action corrects the error. These changes are necessary for continued safety and management of IFR operations in the area.

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 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 7400.11E,

Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ANE MA E5 Newburyport, MA [New]

Anna Jaques Hospital Heliport, MA
(Lat. 42°48'50" N, long. 70°53'30" W)

That airspace extending upward from 700 feet above the surface of the earth within a 6-mile radius of Anna Jaques Hospital Heliport.

Issued in College Park, Georgia, on June 7, 2021.

Andree C. Davis,

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

[FR Doc. 2021-12270 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2021-0177; Airspace Docket No. 21-ACE-9]

RIN 2120-AA66

Amendment of Class E Airspace; Neosho, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Neosho Hugh Robinson Airport, Neosho, MO. This action is the result of an airspace review caused by the decommissioning of the Neosho VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 15447; March 23, 2021) for Docket No. FAA-2021-0177 to amend the amend the Class E airspace at Neosho Hugh Robinson Airport, Neosho, MO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as

listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of Neosho Hugh Robinson Airport, Neosho, MO; and removes the Neosho VOR/DME and associated extension from the airspace legal description.

This action is necessary due to an airspace review caused by the decommissioning of the Neosho VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ACE MO E5 Neosho, MO [Amended]

Neosho Hugh Robinson Airport, MO (Lat. 36°48'39" N, long. 94°23'30" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Neosho Hugh Robinson Airport.

Issued in Fort Worth, Texas, on June 7, 2021.

Martin A. Skinner,

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

[FR Doc. 2021–12217 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2020–1188; Airspace Docket No. 20–ANE–10]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, and Establishment of Class E Airspace; Worcester, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface for Worcester

Regional Airport, Worcester, MA, as an airspace evaluation of the area determined additional airspace is necessary. Also, this action establishes Class E airspace extending upward from 700 feet above the surface for UMass Memorial Medical Center—University Campus Heliport, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This 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, and establishes Class E airspace in

Worcester, MA, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 10886 February 23, 2021) for Docket No. FAA–2020–1188 to amend Class D airspace and Class E surface airspace, for Worcester Regional Airport (formerly Worcester Municipal Airport), Worcester, MA, to amend the Class D and Class E surface areas, and amend the Class E airspace extending upward from 700 feet above the surface, and update the airport's name. In addition, the action proposed to establish Class E airspace extending upward from 700 feet above the surface at UMass Memorial Medical Center–University Campus Heliport.

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 and E airspace designations are published in Paragraphs 5000, 6002, and 6005, respectively of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by amending Class D and Class E surface airspace for Worcester Regional Airport (formerly Worcester Municipal Airport), Worcester, MA. This rule increases the radius of the Class D and Class E surface airspace to 5.1 miles (from 4.2 miles). Also, the airport's Class E airspace extending upward from 700 feet above the surface is increased to a 7.6-mile radius (from 6.7 miles). This action also updates the airport's name. In addition, the FAA establishes Class E airspace extending upward from 700 feet above the surface for UMass Memorial Medical Center—University Campus Heliport, Worcester, MA, providing the controlled airspace required to support the new RNAV

(GPS) standard instrument approach procedures for IFR operations at the heliport. This action also replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the legal description of associated Class D and Class E airspace.

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this 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 Federal Aviation Administration Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.
* * * * *

ANE MA D Worcester, MA [Amended]

Worcester Regional Airport, MA
(Lat. 42°16′02″ N, long. 71°52′32″ W)
Spencer Airport, MA
(Lat. 42°17′26″ N, long. 71°57′53″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 5.1-mile radius of Worcester Regional Airport, excluding that airspace from the surface up to but not including 1,900 feet MSL within a 1-mile radius of the Spencer 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 6002 Class E Surface Airspace.
* * * * *

ANE MA E2 Worcester, MA [Amended]

Worcester Regional Airport, MA
(Lat. 42°16′02″ N, long. 71°52′32″ W)

That airspace extending upward from the surface within a 5.1-mile radius of Worcester Regional 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.
* * * * *

ANE MA E5 Worcester, MA [Amended]

Worcester Regional Airport, MA
(Lat. 42°16′02″ N, long. 71°52′32″ W)
UMass Memorial Medical Center—University Campus Heliport
(Lat. 42°16′30″ N, long. 71°45′36″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Worcester Regional Airport, and within a 6-mile radius of UMass Memorial Medical Center—University Campus Heliport.

Issued in College Park, Georgia, on June 7, 2021.

Andree C. Davis,

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

[FR Doc. 2021–12273 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1187; Airspace Docket No. 20–ANE–9]

RIN 2120–AA66

Establishment of Class E Airspace; Wareham, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Tobey Hospital Heliport, Wareham, MA, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This 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 establishes Class E airspace extending upward from 700 feet above the surface at Tobey Hospital Heliport in Wareham, MA, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 3896, January 15, 2021) for Docket No. FAA-2020-1187 to establish Class E airspace extending upward from 700 feet above the surface at Tobey Hospital Heliport, Wareham, MA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Tobey Hospital Heliport,

Wareham, MA, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at Tobey Hospital Heliport. Subsequent to publication of the Notice of Proposed Rulemaking, the FAA found the geographic coordinates of Tobey Hospital Heliport were incorrect. This action corrects the error. These changes are necessary for continued safety and management of IFR operations in the area.

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 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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ANE MA E5 Wareham, MA [New]

Tobey Hospital Heliport, MA
(Lat. 41°45'18" N, long. 70°42'52" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Tobey Hospital Heliport.

Issued in College Park, Georgia, on June 7, 2021.

Andree C. Davis,

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

[FR Doc. 2021-12276 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION**17 CFR Parts 200, 240 and 249**

[Release No. 34-87005B; File No. S7-05-14]

RIN 3235-AL45

Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: On September 19, 2019, the Securities and Exchange Commission (the "Commission") adopted recordkeeping, reporting, and notification requirements applicable to security-based swap dealers and major security-based swap participants, securities count requirements applicable to certain security-based swap dealers, and additional recordkeeping

requirements applicable to broker-dealers to account for their security-based swap and swap activities. Release 34–87005 (Sept. 19, 2019) was published in the **Federal Register** on Dec. 16, 2019 (). This document corrects certain technical inaccuracies in that release.

DATES: Effective June 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Valentina Minak Deng, Special Counsel, at (202) 551–5778; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: We are making technical corrections to 17 CFR 240.17a–4 and 17 CFR 240.17a–12 under the Securities Exchange Act of 1934, and Parts II and IIC of Form X–17A–5 (referenced in 17 CFR 249.617). The release resulting in the technical inaccuracies was published in the **Federal Register** on December 16, 2019 [84 FR 68550], and adopted by the Commission in Exchange Act Release No. 87005 on September 19, 2019.

List of Subjects

17 CFR Part 240

Administrative practice and procedure, Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities, Swaps.

17 CFR Part 249

Brokers, Recordkeeping and reporting requirements, Securities.

Accordingly, 17 CFR parts 240 and 249 are corrected by making the following correcting amendments:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.17a–14 is also issued under Public Law 111–203, sec. 913, 124 Stat. 1376 (2010).

* * * * *

■ 2. Amend § 240.17a–4 by revising paragraphs (a) and (l) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(a) Every member, broker or dealer subject to § 240.17a–3 must preserve for a period of not less than 6 years, the first two years in an easily accessible place, all records required to be made pursuant to § 240.17a–3(a)(1) through (3), (5), and (21) and (22), and analogous records created pursuant to § 240.17a–3(e).

* * * * *

(l) Records for the most recent two year period required to be made pursuant to § 240.17a–3(f) and paragraphs (b)(4) and (e)(7) of this section which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the member, broker or dealer handled there, the member, broker or dealer need not maintain records at that office, but the records must be maintained at another location within the same State as the member, broker or dealer may select. Rather than maintain the records at each office, the member, broker or dealer may choose to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at another location agreed to by the representative.

* * * * *

■ 3. Amend § 240.17a–12 by revising paragraph (i)(2) to read as follows:

§ 240.17a–12 Reports to be made by certain OTC derivatives dealers.

* * * * *

(i) * * *

(2) If, during the course of the audit or interim work, the certified public accountant determines that any material inadequacies exist in the accounting system, internal accounting controls, procedures for safeguarding securities, or as otherwise defined in paragraph (h)(2) of this section, then the certified public accountant shall call it to the attention of the chief financial officer of the OTC derivatives dealer, who shall inform the Commission by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a–11. The OTC derivatives dealer shall also furnish the certified public accountant with a copy of said notice to the Commission by telegram or facsimile within the same 24 hour period. If the certified public accountant fails to

receive such notice from the OTC derivatives dealer within that 24 hour period, or if the certified public accountant disagrees with the statements contained in the notice of the OTC derivatives dealer, the certified public accountant shall inform the Commission by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a–11. Such report from the certified public accountant shall, if the OTC derivatives dealer failed to file a notice, describe any material inadequacies found to exist. If the OTC derivatives dealer filed a notice, the certified public accountant shall file a report detailing the aspects, if any, of the OTC derivatives dealer's notice with which the certified public accountant does not agree.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Section 249.617 is also issued under Pub. L. 111–203, 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78o–7 note).

* * * * *

Note: The text of Part II of Form X–17A–5 does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 5. Amend Part II of Form X–17A–5 (referenced in § 249.617 of this chapter) by:

■ a. Removing “10. Market risk exposure—for Basel 2.5 firms (sum of Lines 10E, 10H, 10I, 10J, 10K, 10L, 10N, and 10O)

12776”

and adding in its place “10. Market risk exposure—for Basel 2.5 firms (sum of Lines 10E, 10H, 10I, 10J, 10K, 10L, 10M, 10N, and 10O)

12776”.

■ b. Removing “Total aggregate indebtedness liabilities from Statement of Financial Condition (Item 1760)” and adding in its place “Total aggregate indebtedness liabilities from Statement of Financial Condition (Item 1230)”.

- c. Adding “For the period (MMDDYY) from

3932 to 3933”

and “Number of months included in this statement

3931”

in the “Statement of Income (Loss) or Statement of Comprehensive Income, As Applicable” section in a new line immediately preceding the line reading “REVENUE”.

- d. Removing “B. Additions (including non-conforming capital of \$

4263) \$ 4260”

and adding in its place “B. Additions (including non-conforming capital of \$

4262) \$ 4260”.

- e. Removing “(k)(1)—\$2,500 capital category as per Rule 15c3–3” and adding in its place “(k)(1)—Limited business (mutual funds and/or variable annuities only)” in the “Claiming an Exemption from Rule 15c3–3” section.

- f. Removing “3. Other accrued withdrawals” and adding in its place “3. Other anticipated withdrawals” in the “Other Capital Withdrawals—Recap” section.

- g. In the “Computation of CFTC Minimum Capital Requirements” section, removing

“v. Enter the sum of Lines A.ii and A.iv. . . . \$_____

7455”

and adding in its place:

“v. Amount of uncleared swap margin. . . . \$_____

7446

vi. If the FCM is also registered as a swap dealer, enter 2% of Line

A.v. . . . \$_____

7447

vii. Enter the sum of Lines A.ii, A.iv, and A.vi. . . . \$_____

7455”

Note: The text of Part IIC of Form X-17A-5 does not, and this amendment will not, appear in the Code of Federal Regulations.

- 6. Amend Part IIC of Form X-17A-5 (referenced in § 249.617 of this chapter) by:

- a. Removing

“2200bb”, “6631b” and “6636bb”

in Lines 13.B., 13.B.1. and 13.B.2. of the Balance Sheet section and adding in its place

“2200bb”, “6631bb” and “6636bb”, respectively.

- b. Removing

“7206b” and “7205b”

in Lines 9 and 10 of Column B the Regulatory Capital section and adding in its place

“7206bb” and “7205bb”,

respectively.

Dated: May 27, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021-11572 Filed 6-10-21; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130 and 131

[Docket No. FDA-2000-P-0126 (formerly Docket No. 2000P-0685)]

RIN 0910-AI40

Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is issuing a final rule to revoke the standards of identity for lowfat yogurt and nonfat yogurt and amend the standard of identity for yogurt in numerous respects. This action is in response, in part, to a citizen petition submitted by the National Yogurt Association (NYA). The final rule modernizes the yogurt standard to allow for technological advances while preserving the basic nature and essential characteristics of yogurt and promoting honesty and fair dealing in the interest of consumers.

DATES: This rule is effective July 12, 2021. The Director of the Federal Register approves the incorporation by reference of certain publications listed in the rule as of July 12, 2021.

The compliance date of this final rule is January 1, 2024. See section X for further information on the filing of objections.

Submit either electronic or written objections and requests for a hearing on the final rule by July 12, 2021.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before July 12, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 12, 2021. Objections 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 objections in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, 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-2000-P-0126 for “Milk and Cream

Products and Yogurt Products; Final Rule to Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and to Amend the Standard for Yogurt.” Received objections, 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections 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.” We will review this copy, including the claimed confidential information, in our 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:

Andrea Krause, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371, or Joan Rothenberg, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–

024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Final Rule

We are issuing a final rule to revoke the standards of identity for lowfat yogurt and nonfat yogurt and amend the standard of identity for yogurt in numerous respects. This action is in response, in part, to a citizen petition submitted by the NYA. This action modernizes the yogurt standard to allow for technological advances while preserving the basic nature and essential characteristics of yogurt and promotes honesty and fair dealing in the interest of consumers.

B. Summary of the Major Provisions of the Final Rule

The final rule revokes the standards for lowfat yogurt and nonfat yogurt. Consequently, lowfat yogurt and nonfat yogurt are covered under the general definition and standard of identity in

§ 130.10 (21 CFR 130.10), which sets out requirements for foods that deviate from other standardized foods due to compliance with a nutrient content claim. The final rule provides a modern yogurt standard to allow for technological advances, preserves but simplifies the basic nature and essential characteristics of yogurt, and promotes honesty and fair dealing in the interest of consumers.

The final rule amends the standard of identity for yogurt by making certain technical changes, permitting reconstituted forms of basic dairy ingredients (cream, milk, partially skimmed milk, and skim milk used alone or in combination) and the use of any optional safe and suitable milk-derived ingredient under certain conditions. The final rule also establishes functional classes of safe and suitable ingredients including cultures, flavoring, color additives, stabilizers, emulsifiers, and preservatives, and replaces the list of nutritive sweeteners with the term “nutritive carbohydrate sweeteners.” The final rule permits the optional labeling statement “contains live and active cultures” or similar statement if the yogurt contains specified amounts of live and active cultures. For yogurt treated to inactivate viable microorganisms, the final rule requires a statement of “does not contain live and active cultures” on the label.

C. Legal Authority

This final rule is issued pursuant to our authority under sections 401, 403(a)(1), 201(n), and 701(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 341, 343(a)(1), 321(n), and 371(e)).

Under section 701(e) of the FD&C Act, any action for the amendment or repeal of any definition and standard of identity under section 401 of the FD&C Act for any dairy product (e.g., yogurt) must be begun by a proposal made either by FDA under our own initiative or by petition of any interested persons, showing reasonable grounds therefore, filed with the Secretary. The NYA submitted such a citizen petition on February 18, 2000, requesting that we, among other things, revoke the standards of identity for lowfat yogurt (§ 131.203 (21 CFR 131.203)) and nonfat yogurt (§ 131.206 (21 CFR 131.206)) and amend the standard of identity for yogurt (§ 131.200 (21 CFR 131.200)).

D. Costs and Benefits

Because we are publishing this rule in accordance with the formal rulemaking provisions of 5 U.S.C. 556 and 557, this rule is exempt from the economic

analysis requirements of Executive Order 12866. However, we have examined the economic implications of this rulemaking on small businesses. On a per firm, per year basis, estimated costs are between approximately \$0.3 million and \$2.7 million per small yogurt manufacturer per year in 2019 dollars discounted at 3 percent and

between approximately \$0.4 million and \$2.7 million per small yogurt manufacturer per year discounted at 7 percent. The rule will likely benefit some manufacturers by modernizing the yogurt standard to allow for technological advances in food processing and to incorporate flexibility in yogurt manufacturing while

preserving the basic nature and essential characteristics of yogurt. Because this rule may generate compliance costs for some small firms, we believe that this rule would have a significant economic impact on a substantial number of small entities.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation	What it means
ANPRM	Advance Notice of Proposed Rulemaking.
AOAC International	Association of Official Analytical Collaboration International (formerly Association of Official Agricultural Chemists).
CFR	Code of Federal Regulations.
CFU	Colony Forming Units.
Codex	Codex Alimentarius Commission.
DV	Daily Value.
E.O.	Executive Order.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FR	Federal Register.
GMP	Good Manufacturing Practice.
ISO	International Organization for Standardization.
NLEA	Nutrition Labeling and Education Act.
NYA	National Yogurt Association.
RACC	Reference Amount Customarily Consumed.
UPC	Universal Product Code.

III. Background

A. Legal Authority

Section 401 of the FD&C Act directs the Secretary to issue regulations fixing and establishing for any food a reasonable definition and standard of identity whenever, in the judgment of the Secretary, such action will promote honesty and fair dealing in the interest of consumers. Section 403(a)(1) of the FD&C Act deems food to be misbranded if its labeling is false or misleading in any particular. Labeling may be misleading due to affirmative representations made or suggested by statement, word, design, device, or any combination thereof; labeling may also be misleading due to failure to reveal facts material in light of such representations (see section 201(n) of the FD&C Act).

Under section 701(e)(1) of the FD&C Act, any action for the amendment or repeal of any definition and standard of identity under section 401 of the FD&C Act for any dairy product (*e.g.*, yogurt) must begin with a proposal made either by FDA under our own initiative or by petition of any interested persons. The NYA submitted a citizen petition on February 18, 2000 (Docket No. FDA–2000–P–0126, formerly Docket No. 2000P–0685), under our procedural regulations in 21 CFR 10.30, requesting, among other things, that we revoke the standards of identity for lowfat yogurt (§ 131.203) and nonfat yogurt (§ 131.206) and amend the standard of

identity for yogurt (§ 131.200). In the **Federal Register** of July 3, 2003 (68 FR 39873), FDA issued an advance notice of proposed rulemaking (ANPRM), publishing the proposals in NYA's petition consistent with section 701(e)(1) of the FD&C Act. The ANPRM requested comment on whether the actions proposed in the petition would promote honesty and fair dealing in the interest of consumers. FDA subsequently issued a proposed rule in the **Federal Register** of January 15, 2009 (74 FR 2443) in part to respond to the citizen petition. FDA is now acting pursuant to section 701(e) of the FD&C Act to finalize the rule.

B. History of the Current Standards of Identity for Yogurt, Lowfat Yogurt, and Nonfat Yogurt

In the **Federal Register** of January 30, 1981 (46 FR 9924), we published a final rule establishing standards of identity for yogurt (§ 131.200), lowfat yogurt (§ 131.203), nonfat yogurt (§ 131.206), certain milk products (21 CFR 131.111, 131.112, 131.136, 131.138, 131.144, and 131.146)), and eggnog (21 CFR 131.170)). Interested persons were given until March 2, 1981, to file objections and request a hearing on the final rule. Twenty-one responses were filed objecting to specific provisions of the final rule and, in most cases, requesting a hearing. In response to those objections, we stayed the effective date for provisions regarding certain milk products and eggnog. In addition, we

stayed the following provisions in the standards of identity for yogurt, lowfat yogurt, and nonfat yogurt: (1) Provisions that restricted the type of milk-derived ingredients that may be used to increase the milk solids not fat content (§§ 131.200(c)(1), 131.203(c)(1), and 131.206(c)(1) (redesignated as §§ 131.200(d)(1), 131.203(d)(1), and 131.206(d)(1), respectively)); (2) provisions that excluded the use of reconstituted dairy ingredients as basic ingredients (§§ 131.200(a), 131.203(a), and 131.206(a)); (3) provisions that excluded the addition of preservatives (§§ 131.200(c), 131.203(c), and 131.206(c) (redesignated as §§ 131.200(d), 131.203(d), and 131.206(d), respectively)); (4) provisions that set a minimum titratable acidity of 0.9 percent, expressed as lactic acid (§§ 131.200(a), 131.203(a), and 131.206(a)); and (5) § 131.200(a) specifying that the 3.25 percent minimum milkfat level applies after the addition of one or more of the optional sources of milk solids not fat listed in § 131.200(c)(1) (redesignated as § 131.200(d)(1)) (47 FR 41519 at 41523, September 21, 1982).

Due to competing priorities and limited resources, we did not hold a public hearing to resolve these issues, and the effective date for these provisions has been stayed since September 21, 1982. Therefore, these provisions have never been in effect, and yogurt, lowfat yogurt, and nonfat yogurt sold in interstate commerce have

not been required to conform to them. Consequently, yogurt, lowfat yogurt, and nonfat yogurt have varied with respect to the type of milk-derived ingredients used to increase the milk solids not fat content, the use of reconstituted dairy ingredients as basic ingredients, addition of preservatives, level of acidity, and application of the minimum milkfat level. These products have, however, been required to conform to the non-stayed provisions in §§ 131.200, 131.203, and 131.206.

In 1990, the Nutrition Labeling and Education Act (NLEA) (Pub. L. 101–535) amended the FD&C Act and established the circumstances in which claims that describe the nutrient content of food could be made. In response to the NLEA, we published a final rule on January 6, 1993, entitled “Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definitions of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food” that established definitions for specific nutrient content claims in part 101 (21 CFR part 101) together with principles for their use (58 FR 2302) (the 1993 final rule). At the same time, we published a final rule entitled “Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term” (58 FR 2431) that established the general definition and standard of identity in § 130.10 for foods that substitute for a standardized food but deviate from the standard of identity due to compliance with an expressed nutrient content claim defined by FDA regulation, including the expressed nutrient content claims “no fat” and “low fat” (see § 101.62(b)) and “light” or “reduced calorie” (see § 101.60(b)).

We noted in the 1993 final rule (58 FR 2302 at 2314) that the common or usual names of certain foods with existing standards of identity include nutrient content claims. Lowfat yogurt and nonfat yogurt are among these foods. We further noted that these foods are exempt under section 403(r)(5)(C) of the FD&C Act from compliance with nutrient content claim definitions established by regulation, provided that the foods were subject to a standard of identity on November 8, 1990. As such, nonfat yogurt and lowfat yogurt are subject to the fat content requirements specified in their respective standards of identity rather than the requirements in § 101.62(b)(1) for “no fat” and § 101.62(b)(2) for “low fat.” In 1995, we proposed to revoke the standards of identity for lowfat yogurt and nonfat yogurt, along with the standards of identity for other dairy foods, so that the

foods would be covered under § 130.10 and subject to the nutrient content claim definitions in part 101 (60 FR 56541). This action was intended to provide for consistency in the nomenclature and labeling of food products.

We deferred action on our proposal to revoke the standards of identity for lowfat yogurt and nonfat yogurt (61 FR 58991, November 20, 1996), citing economic considerations and technical difficulties for the yogurt industry if required to fortify lowfat yogurt and nonfat yogurt in accordance with the nutritional equivalence requirement in § 130.10(b) (61 FR 58991 at 58999). We later withdrew the proposed rule on November 26, 2004 (69 FR 68831).

C. Description of the Proposed Rule

In the **Federal Register** of January 15, 2009 (74 FR 2443), we published a proposed rule to revoke the standards of identity for lowfat yogurt (§ 131.203) and nonfat yogurt (§ 131.206) and amend the standard of identity for yogurt (§ 131.200). The proposal was, in part, in response to a citizen petition submitted by the NYA on February 18, 2000, and our ANPRM (68 FR 39873; July 3, 2003) in which we asked for comments and information concerning the NYA petition (Docket No. FDA–2000–P–0126, formerly Docket No. 2000P–0685).

We proposed to revoke the standards of identity for lowfat yogurt (§ 131.203) and nonfat yogurt (§ 131.206) so that yogurt (under proposed § 130.200) could be modified according to the “low fat” and “no fat” nutrient content claim definitions in § 101.62(b), thereby bringing lowfat yogurt and nonfat yogurt within the coverage of § 130.10. Consequently, lowfat yogurt and nonfat yogurt would be standardized foods under the general definition and standard of identity, rather than standardized foods under §§ 131.203 and 131.206.

We also proposed numerous changes to the standard of identity for yogurt in § 131.200. In brief, we proposed to modify the description of the standardized food yogurt; define basic dairy, optional dairy, and other optional ingredients used in the manufacture of yogurt; revoke the provisions for optional addition of vitamins A and D and the associated labeling requirements; update or provide the methods of analysis for milk solids not fat, titratable acidity, pH, and live and active cultures; and modify nomenclature, including required and recommended descriptors based on the manufacture of the product.

We further discussed our disagreement with some of the requests

in the NYA citizen petition, including the requests to require that yogurt contain a specified amount of live and active cultures; permit the addition of optional milk-derived ingredients after culturing; permit the use of whey protein concentrate as a basic dairy ingredient; require a minimum amount of dairy ingredients; and permit a broad category of safe and suitable ingredients for nutritional or functional purposes (see 74 FR 2443 at 2449 through 2453).

IV. Comments on the Proposed Rule, FDA Responses, and Description of the Final Rule

A. Introduction

We requested comments on the proposed rule by March 31, 2009. We later extended the comment period to April 29, 2009 (Ref. 1). We received over 6,200 comments (including more than 6,000 form letters) from consumers, industry, trade associations, a scientific organization, and academia.

Some comments supported one or more of the proposed requirements. Other comments opposed certain proposed requirements, suggested changes to the proposed requirements, or asked us to clarify the proposed requirements. Comments from several trade associations representing food manufacturers and ingredient suppliers supported the need to modernize the yogurt standard to allow for recent technological advances in food processing and to incorporate flexibility in yogurt manufacturing while preserving the basic nature and essential characteristics of yogurt. However, other comments urged us not to revoke or change the standards of identity for yogurt, expressing concerns that the proposal would reduce the requirements for yogurt, including those provisions regarding nutrition, quality, safety, and labeling.

In this section, we discuss the issues raised in the comments on the proposed rule and our responses, and we describe the final rule. For ease of reading, we preface each comment discussion with a numbered “Comment,” and each response with a corresponding numbered “Response.” We have numbered each comment to help distinguish among different topics. The number assigned to each comment is for organizational purposes and does not signify the comment’s importance or the order in which it was received.

We did not respond to comments outside the scope of this rulemaking, such as comments related to the safety of domestic versus imported ingredients, or country of origin labeling. The final rule is limited to

defining the standard of identity for yogurt and revoking the standards for lowfat yogurt and nonfat yogurt.

B. General Comments

(Comment 1) Several comments requested that we not change the standard of identity for yogurt. The comments asserted that the proposed rule lowers the requirements for yogurt, yields substantially to the NYA petition, and provides yogurt manufacturers too much flexibility in the manufacture of yogurt.

(Response 1) We disagree with the comments. The final rule does not lower the requirements for yogurt, but rather modernizes the yogurt standard to allow for technological advances while preserving the basic nature and essential characteristics of yogurt and promotes honesty and fair dealing in the interest of consumers. Technological advances in food science and technology allow for a wider range of milk-derived ingredients developed with advances in membrane processing technology in the dairy industry. The final rule permits the use of emulsifiers and preservatives to prevent separation, improve stability and texture, and extend the shelf-life of yogurt. The final rule also allows for modern methods for measuring acidity (pH in addition to titratable acidity) and analysis for milkfat, total solids content, milk solids not fat, titratable acidity, and a method to measure the characteristic live and active cultures or microorganisms in yogurt.

As described in our responses to comments 14, 21, 22, and 30, the final rule modifies some requirements to best preserve the integrity and economic value that consumers expect of yogurt. In addition, the final rule provides regulatory clarity, aligns the standard with products on the market, reflects industry practices, and promotes honesty and fair dealing in the interest of consumers:

Although we considered the NYA petition mentioned in section III.C., we also considered multiple factors, such as new processing technology and ingredients before proposing to amend the yogurt standards.

We also disagree that the rule provides yogurt manufacturers too much flexibility in the manufacture of yogurt. Providing flexibility in manufacturing may increase efficiency while maintaining the basic nature and essential characteristics of yogurt in terms of the taste, flavor, and texture expected by consumers. For example, the variety of yogurt products increased greatly over the years, with thicker Greek-style yogurt becoming as popular as regular yogurt. Permitting optional

functional dairy ingredients achieves a desired protein content for Greek-style yogurt prior to culturing/fermentation, and allows for manufacturing without the production of the undesirable acid whey that is potentially a disposal problem. This flexibility also allows the use of technological advances without compromising safety or quality.

(Comment 2) Several comments said that the proposed rule would lower the quality and safety standards for yogurt by specifically allowing non-Grade “A” dairy ingredients to be used in the manufacture of yogurt.

(Response 2) The comments may have misinterpreted the current standards and proposed rule. The current standards for yogurt (§ 131.200), lowfat yogurt (§ 131.203), or nonfat yogurt (§ 131.206) do not specify the use of either Grade “A” or non-Grade “A” dairy ingredients in the manufacture of these products. Nor did we propose or discuss the specific use of non-Grade “A” dairy ingredients in the manufacture of yogurt in the proposed rule. Thus, there is no change between the current standards and the standard of identity for yogurt in this final rule with respect to the use of non-Grade “A” ingredients. The use of safe and suitable milk-derived ingredients as described in the final rule does not lower the value, grade, or safety or attribute requirements for yogurt and its ingredients.

C. Section 131.200(a)—Description

The proposed rule, at § 131.200(a), would require yogurt to contain a minimum of 3.25 percent milkfat, a minimum of 8.25 percent milk solids not fat, and a minimum of 0.7 percent titratable acidity expressed as lactic acid or maximum pH of 4.6, before the addition of bulky flavoring ingredients. The proposed rule also would require yogurt that is labeled with the optional phrase “contains live and active cultures” or another appropriate descriptor to contain a minimum of 10^7 colony forming units per gram (CFU/g) of live and active cultures at the time of manufacture with a reasonable expectation of 10^6 CFU/g throughout the manufacturer’s assigned shelf life of the food.

(Comment 3) Some comments supported the proposal requiring yogurt to have a minimum milkfat of 3.25 percent and minimum milk solids not fat of 8.25 percent before the addition of bulky flavoring ingredients. However, one comment would replace the minimum 3.25 percent milkfat requirement with a requirement of 3 g of fat (including milkfat and other fat present in the bulky flavoring

ingredients) in the finished product per reference amount customarily consumed (RACC). The comment said that requiring 3.25 percent milkfat before the addition of bulky flavoring ingredients can cause inconsistency because the amount of total fat in the finished product can vary depending on the amount and/or type of added flavoring ingredients. The comment suggested that some flavoring ingredients, such as chocolate, nuts, and coconut, can contribute to total fat in the finished product. The comment stated that a fat requirement based on the finished product would also provide manufacturers the flexibility of adding cream after culturing.

(Response 3) As discussed in the proposed rule (74 FR 2443 at 2448), we do not believe it is appropriate to change the minimum milkfat content to 3 g fat per 255 g, or 1.3 percent, because the yogurt standard with the minimum 3.25 percent milkfat requirement appears to be used in the manufacture of full-fat yogurts available in the marketplace and is consistent with the basic nature and essential characteristics of yogurt. According to the U.S. Department of Agriculture (USDA) FoodData Central (2019), the total fat content of “yogurt, plain, whole milk” is 3.25 g/100 g serving (3.25 percent) (Ref. 2). This is consistent with the minimum milkfat requirement of the current standard of identity for yogurt.

We emphasize that the minimum fat requirement of 3.25 percent is specifically for milkfat. Allowing fat from nondairy ingredients to count towards the minimum fat level deviates from the basic nature and essential characteristics of yogurt as other types of nondairy fats or oils could contribute to variances in the taste, texture, color, or aroma of yogurt (Refs. 3 and 4).

In addition, as discussed in response 15, we are not allowing the addition of optional dairy ingredients, such as pasteurized cream, after culturing. Therefore, it is appropriate to specify a minimum milkfat level of 3.25 percent before the addition of bulky flavoring ingredients.

(Comment 4) Some comments asked us to clarify whether the phrase “bulky flavoring ingredients” in proposed § 131.200(a) has the same meaning as the phrase “bulky flavors” used in § 131.200(a). One comment asked us to use the term “bulky flavors” in the final rule.

(Response 4) We consider the two terms, “bulky flavors” and “bulky flavoring ingredients,” to have similar meaning. Examples of bulky flavoring ingredients are fruit and fruit preparations. To be consistent with

most of the dairy standards, we have revised the rule to adopt the term “bulky flavoring ingredients.”

(Comment 5) Currently, the stayed provisions in §§ 131.200(a), 131.203(a), and 131.206(a) specify that yogurt have a titratable acidity of not less than 0.9 percent, expressed as lactic acid. We stayed this provision of the standard on September 21, 1982 (47 FR 41519 at 41522). Titratable acidity and pH can both be used to measure the acidity of a food product. In the proposed rule (74 FR 2443 at 2449), we proposed that yogurt have either a titratable acidity of not less than 0.7 percent, expressed as lactic acid, or a pH of 4.6 or lower.

Several comments agreed that the stayed requirement of 0.9 percent titratable acidity, expressed as lactic acid, should be changed. One comment supported the minimum titratable acidity of 0.7 percent or maximum pH of 4.6. Other comments would modify the minimum titratable acidity to 0.6 percent measured in the cultured and fermented yogurt before the addition of bulky flavor ingredients.

One comment said that a minimum titratable acidity of 0.7 percent in the proposed rule is still too high for yogurt products with chocolate or delicate fruit flavors. Another comment claimed that a lower acidity requirement helps industry develop “light” yogurt products. Other comments pointed out that a minimum 0.6 percent titratable acidity is consistent with the Codex Standard for Fermented Milks (CXS 243–2003) (Ref. 5). Codex Alimentarius (Codex) is an international body established by the Food and Agriculture Organization of the United Nations and the World Health Organization.

Some comments asked us to revise the rule so that the maximum pH of 4.6 applies to finished product within 24 hours after filling. The comments said that, for yogurt that continues to ferment in the final container, such as “cup set” and “warm fill” yogurt, the product pH continues to drop during the cooling step. The comments also argued that, based on our own safety evaluation, we allow all yogurt products to be filled with an initial pH of 4.80 if the product pH reaches 4.6 or below within 24 hours of filling.

(Response 5) We disagree with the comments that would modify the minimum titratable acidity to 0.6 percent or that a minimum titratable acidity of 0.7 percent is still too high for certain yogurt products. Providing for the measurement of acidity in yogurt as a determination of its pH as well as its titratable acidity will introduce flexibility in the yogurt standard and gives manufacturers the flexibility to

choose a method that best suits their product. As we noted in the proposed rule, the NYA citizen petition recommended a maximum pH of 4.6, and we believe that allowing a minimum titratable acidity of 0.7 percent or an equivalent maximum pH of 4.6 is appropriate as it reflects current industry practice and better meets some consumers’ taste preferences (74 FR 2443 at 2448).

The final rule’s requirement of a minimum titratable acidity of 0.7 percent is similar, but not identical, to requirement or position by Codex. We acknowledge that the Codex Standard established a minimum composition for yogurt of 0.6 percent titratable acidity expressed as percent lactic acid. However, yogurt products produced in compliance with our requirement of 0.7 percent titratable acidity would comply with the Codex Standard with respect to titratable acidity. Based on our observation of chocolate yogurt products and yogurt flavored with a variety of fruit flavors currently on the market that have a 0.7 percent titratable acidity, we do not believe that the differences between our final rule and the position taken by Codex will adversely affect the ability of manufacturers to produce yogurt with chocolate or delicate fruit flavors or “light” yogurt products, while maintaining the basic nature and essential characteristics of yogurt.

As for the comments that would revise the rule so that the maximum pH applies to finished products within 24 hours after filling, we view the fill pH as an in-process product characteristic for yogurt products. Requiring a maximum pH of 4.6 in the cultured and fermented yogurt before the addition of bulky flavor ingredients ensures the inhibition of growth and toxin formation of *Clostridium botulinum* (the pathogenic organism responsible for foodborne botulism). The manufacturer controls the condition after filling to ensure that the characterizing bacterial culture continues to ferment the product to produce a yogurt product with a maximum pH of 4.6 before the addition of bulky flavoring ingredients.

If the yogurt contains bulky flavoring ingredients, the finished product pH reflects the equilibrium pH of the cultured and fermented yogurt including the bulky flavoring ingredients. Some bulky flavoring ingredients (e.g., fruit preparations) can lower the pH of the cultured and fermented yogurt. Applying the pH requirement to finished product after the addition of these ingredients could indirectly allow the use of acidulants to achieve the desired pH. The yogurt

standard does not permit the use of food grade acidulants to meet the acidity or pH requirements (see response 6). To uphold the basic nature and essential characteristics of yogurt while maintaining product safety and attributes, the yogurt standard must ensure that the cultured and fermented yogurt reaches the desired titratable acidity of 0.7 percent or maximum pH of 4.6 solely by the fermentation action of bacterial culture and not through the additions of acidulants or bulky flavoring ingredients like fruit preparations. Thus, we do not agree that the maximum pH of 4.6 should apply only to the finished product.

The final rule, therefore, requires, at § 131.200(a), that yogurt have a titratable acidity of not less than 0.7 percent, expressed as lactic acid, or a pH of 4.6 or lower. We emphasize that both the titratable acidity and the pH requirements apply to yogurt before the addition of bulky flavoring ingredients.

(Comment 6) Several comments stated that the term “culturing” as used in § 131.200(a) should only refer to milk fermentation by the characterizing cultures (*Lactobacillus delbrueckii*, subspecies *bulgaricus*, and *Streptococcus thermophilus*) and other additional cultures allowed as optional ingredients. The comments asked us to clarify that “culturing” does not refer to the addition of lactic acid or other acidulants in modifying the standard to allow the use of a broad category of safe and suitable ingredients that serve a nutritional or functional purpose.

(Response 6) We agree that “culturing” as used in § 131.200(a) refers to milk fermentation by the characterizing cultures (*L. delbrueckii*, subspecies *bulgaricus*, and *S. thermophilus*), and other cultures as described in § 131.200(d)(1).

“Culturing” does not refer to the addition of lactic acid or other acidulants. Lactic acid or other acidulants are not permitted as other optional ingredients under § 131.200(d).

(Comment 7) A few comments said we should not require yogurt to contain a specified amount of live and active cultures and should permit heat treatment of yogurt after culturing to extend shelf life. However, many comments stated that a unique and defining characteristic of yogurt is the presence of live and active cultures and these live and active cultures provide health benefits. These comments indicated that an important health benefit of live and active cultures in yogurt is their ability to break down lactose to allow lactose intolerant individuals to consume yogurt without uncomfortable side effects. One

comment stated that over 80 percent of the yogurt products sold in the United States in the time around 2009 declared the presence of live and active cultures either on the labels or on company websites. Another comment provided consumer survey results to contend that consumers expect yogurt products to contain live and active cultures. Other comments indicated that the requirement of live and active cultures is consistent with the Codex standard.

Other comments disagreed whether yogurt can be heat-treated after culturing. Some comments strongly opposed heat treatment after culturing and indicated that labeling the resultant product as “yogurt” is misleading and deceptive because consumers expect yogurt to contain live and active cultures. Other comments did not object to heat treatment after culturing if the package states that the product does not contain live and active cultures.

Some comments opposed any changes to the heat treatment provisions in the existing yogurt standard. The comments argued that, with extended shelf life, heat-treated yogurt gives consumers an additional option for a healthy dairy product. The comments also claimed that neither the presence nor the number of living bacteria in yogurt has any demonstrated health benefit. Some comments also suggested that some yogurt manufacturers may want to market their yogurt products with the claim “contains live and active cultures.” Many comments expressed interest in knowing whether a yogurt product contains live and active cultures.

(Response 7) We analyzed survey data submitted by the NYA and found that, while a majority of respondents expected to find live and active cultures as an ingredient in yogurt, the absence of a discussion in the survey on the response rates raises questions regarding potential bias in the results (Ref. 6). Consequently, we are unable to conclude, based on this survey, that yogurt should necessarily contain live and active cultures or that heat treatment after culturing should be prohibited.

Based on the comments discussing live and active cultures, we believe that many consumers are interested in knowing whether the yogurt products they purchase contains live and active cultures and that this information may impact their purchasing decisions. We therefore conclude that the labeling of yogurt should disclose the absence of live and active cultures rather than the use of heat treatment after culturing. The disclosure statement in § 131.200(f)(1)(ii) has been changed in

the final rule to require an accompanying statement of “does not contain live and active cultures” on the product label. Thus, the rule permits the treatment of yogurt after culturing to inactivate viable microorganisms and extend shelf life of the product, provided that the label bears this accompanying statement. We discuss the labeling requirements for such treated yogurt in more detail in responses 27, 28, and 29.

We note that, in the future, new technologies other than heat treatment (e.g., high pressure processing) may be used to inactivate viable microorganisms in yogurt and extend yogurt shelf life. Therefore, the final rule, at § 131.200(a), states that, to extend the shelf life of the food, yogurt may be treated after culturing to inactivate viable microorganisms rather than limiting yogurt specifically to heat treatment after culturing to extend the shelf life of the food. Such treated foods require an accompanying statement of “does not contain live and active cultures” on the product label.

In a summary and analysis of the consumer survey results submitted by one comment, we did not find that the consumer research results provided evidence that consumers expect all yogurt products to contain live and active cultures (Ref. 6).

Given consumer interest in knowing the presence of live and active cultures in yogurt, manufacturers may wish to affirmatively convey to consumers that live and active cultures are present. Therefore, the final rule, at § 131.200(f)(2), permits the optional labeling statement “contains live and active cultures” or another appropriate descriptor if the yogurt product contains a minimum level of live and active cultures as explained further in response 8.

As for the comments regarding the Codex standard, the final rule is consistent with the Codex standard, which also does not require live and active cultures in heat treated yogurt. For yogurt that is not heat treated, the requirement to permit the optional labeling statement “contains live and active cultures” is consistent with the Codex standard.

(Comment 8) Many comments supported setting a minimum level of live and active cultures. Some comments provided general support without mentioning any specific levels of live and active cultures. Other comments addressed the issue of what level of live and active cultures must be present when the label bears a statement to this effect. Among these comments, some agreed with our proposed levels of

live and active cultures. Some supported the minimum level of 10^7 CFU/g of live and active cultures at the time of manufacture but did not support the inclusion of “reasonable expectation of 10^6 CFU/g throughout the manufacturer’s assigned shelf life of the product.” One comment stated that manufacturers do not always have control over the storage conditions at retail levels. One comment requested that we not set a minimum level of live and active cultures in the final rule because, for yogurt that is not heat-treated, the provisions on fermentation, minimum titratable acidity, and maximum pH already ensure that the bacterial culture is above 10^7 CFU/g after culturing.

(Response 8) The proposed rule specified a minimum level of live and active cultures of 10^7 CFU/g at the time of manufacture with a reasonable expectation of 10^6 CFU/g through the manufacturer’s assigned shelf life of the product. We have included these minimum levels in the final rule under § 131.200(f)(2) for the optional labeling statement “contains live and active cultures.” We decline to revise the rule to specify the minimum level of live and active cultures only at the time of manufacture. The time of manufacture is not the point when consumers purchase or consume their yogurt products. Even though manufacturers do not always have full control over the storage conditions at retail level, yogurt products should be properly refrigerated throughout the distribution channel. Studies generally indicate that the characterizing yogurt cultures survive well during cold storage and at lowered pH levels (Refs. 7 through 9). One study shows that, when commercial yogurt products were stored at 4 °C, levels of characterizing yogurt cultures remained relatively stable over the study period of 4 weeks, with 1.0 or less log reduction (Ref. 8). Studies also show that, in non-heated yogurt, the mixture of *S. thermophilus* and *L. bulgaricus* is typically well above the minimum 10^6 CFU/g at the end of refrigerated storage, even though some reduction occurred during storage depending on the specific culture used, the storage temperature, and other factors (Refs. 7 through 9). Given these data indicating the minimum of 10^6 CFU/g of live and active cultures will likely exist throughout the shelf life of the food, and to promote honesty and fair dealing in the interest of consumers, the final rule permits the optional labeling statement “contains live and active cultures” or another appropriate descriptor if the yogurt product contains a minimum of

10⁷ CFU/g of live and active cultures at the time of manufacture with a reasonable expectation of 10⁶ CFU/g throughout the manufacturer's assigned shelf life of the product (§ 131.200(f)(2)).

We also do not agree that the provisions of fermentation, minimum titratable acidity, and maximum pH can replace the requirement of the levels of live and active cultures in the finished product. Although the culturing of yogurt is achieved by milk fermentation by the characterizing culture as described in § 131.200(a) and other cultures as described in § 131.200(d)(1) (see response 6), the optional labeling statement "contains live and active cultures" or another appropriate descriptor refers specifically to the presence of live and active cultures in the finished product. The minimum level of live and active cultures at the time of manufacturing and a reasonably expected level throughout the assigned shelf life provide a uniform production standard. Therefore, the final rule, at § 131.200(f)(1)(ii), requires that, if the yogurt product is labeled with the phrase "contains live and active cultures" or another appropriate descriptor, the yogurt product must contain a minimum of 10⁷ CFU/g of live and active cultures at the time of manufacture with a reasonable expectation of 10⁶ CFU/g throughout the manufacturer's assigned shelf life of the product.

On our own initiative, for added clarity, we relocated the provisions in proposed § 131.200(a) regarding the minimum number of live and active microorganisms yogurt may contain, to § 131.200(f), "Nomenclature," describing the number of live and active microorganisms necessary for the product to be labeled with the phrase "contains live and active cultures."

(Comment 9) One comment opposed heat treatment after culturing and said that, if we permit such practice in the final rule, we should require all non-heat-treated yogurt to contain the proposed minimum levels of live and active cultures regardless of whether any "live and active cultures" label claims are made for the product. The comment reasoned that, under the proposed rule, there were at least three classes of yogurt products: (1) Heat-treated yogurt after culturing; (2) yogurt with live and active cultures and labeled with the voluntary live and active cultures claim; and (3) yogurt with live and active cultures but without any live and active cultures claim. The comment said that these different classes of yogurt can create consumer confusion and that, if we allow heat treatment of yogurt, we

should require all non-heat-treated yogurt to contain the minimum levels of live and active cultures to reduce consumer confusion.

(Response 9) We disagree that these categories of products will cause consumer confusion. As discussed in responses 7 and 8, it is not evident that consumers always expect yogurt to contain live and active cultures. As such, labeling appears to be a better approach to informing consumers about the absence or presence of live and active cultures. The labeling provisions in § 131.200(f)(1)(ii) and (2) of the final rule will allow consumers to identify products that do not contain live and active cultures (which is a consequence of treatment after culturing) and products that contain a meaningful amount of live and active cultures. The disclosure statements specified in the provisions are required to accompany the name on the principal display panel of the product label and therefore readily inform consumers about the absence or presence of live and active cultures.

(Comment 10) One comment asked us to clarify that nonstandardized products that use yogurt as an ingredient are not required to meet the minimum level of 10⁷ CFU/g live and active cultures. The comment gave examples of nonstandardized products, such as frozen yogurt, yogurt-coated cereal, and dried yogurt powder. The comment also asked us to clarify whether foods that do not meet the standard of identity for yogurt can continue to use the descriptive term "yogurt" as part of the food's name on the label.

(Response 10) Any food that purports to be or is represented as yogurt, must conform to the definition standard of identity for yogurt and its label must bear the name "yogurt" (see 21 U.S.C. 343(g)). Foods that do not purport to be or are not represented as yogurt, are not subject to these requirements. In our experience, products such as frozen yogurt, yogurt-coated cereal, and dried yogurt powder are not represented as and do not purport to be yogurt. Instead, they are nonstandardized foods, and their labels must bear their common or usual names in accordance with section 403(i)(1) of the FD&C Act. Common or usual names are generally established by common usage, though in some cases, common or usual names for nonstandardized foods have been established by regulation (see 21 CFR part 102, subpart B). Because no such regulation for these nonstandardized foods exists, they should be labeled with their common usage names (e.g., "frozen yogurt), provided that the

names do not mislead consumers (see 21 U.S.C. 343(a)(1)).

When "yogurt" is used as part of the name of products such as frozen yogurt, yogurt-coated cereal, and dried yogurt powder, we generally expect that yogurt, or a substance derived from yogurt (*i.e.*, yogurt powder) is used as an ingredient in their manufacture. The ingredient must be or be derived from yogurt that complies with § 131.200. For example, we expect that an ingredient used in a yogurt drink is yogurt made in accordance with § 131.200, which is then combined with other ingredients to produce a drink product. The ingredient must be declared by its common or usual name in the ingredient statement on the product label in accordance with section 403(i)(2) of the FD&C Act, and § 101.4(a) and (b).

D. Section 131.200(b)—Basic Dairy Ingredients

The proposed rule, at § 131.200(b), would state that cream, milk, partially skimmed milk, skim milk, and the reconstituted versions of these ingredients may be used alone or in combination as the basic dairy ingredients in yogurt manufacture. The portion of § 131.200(b) that excluded the use of reconstituted versions of the basic ingredients in yogurt was stayed in 1982, so we could not take compliance action against the use of these ingredients until the stay was formally resolved. Although requested by the NYA petition, we did not propose to permit the use of whey protein concentrate as a basic dairy ingredient in yogurt manufacture (see 74 FR 2443 at 2453).

(Comment 11) Some comments opposed the use of reconstituted forms of basic dairy ingredients but did not provide data to support their assertions of any potential safety or technical concerns. Other comments supported the use of reconstituted forms of basic dairy ingredients and stated that these ingredients are already permitted in the manufacture of other standardized dairy foods, have been routinely used by the yogurt industry due to the stay of § 131.200(c), and do not adversely impact the safety or characteristics of yogurt. One comment would allow the use of all types of safe and suitable milk-derived ingredients to meet the minimum required 8.25 percent milk solids not fat.

(Response 11) The comments opposed to reconstituted forms of dairy ingredients did not provide any data nor do we have any information to indicate any technical or safety concern or that use of these ingredients affects the basic nature and essential characteristics of

yogurt or does not comport with consumer expectations about the food. Although the comments provided no data to support that yogurt containing reconstituted forms of dairy ingredients are less acceptable or differ in taste, flavor, or texture to yogurts produced with other basic dairy ingredients, the use of reconstituted forms of dairy ingredients and other optional dairy ingredients in yogurt throughout the marketplace indicates that the basic nature and essential characteristics of yogurt are maintained in producing acceptable and desired yogurt products. Therefore, the final rule includes the reconstituted versions of cream, milk, partially skimmed milk, and skim milk among the basic dairy ingredients in § 131.200(b).

(Comment 12) One comment asked us to expand the list of basic dairy ingredients to include ultrafiltered (UF) milk, its resulting dried products (which were stated to include milk protein concentrate and isolate), and skim milk powder (SMP). The comment described SMP as an ingredient nearly identical to skim milk except for the removal of water and the standardization of protein. The comment stated that allowing UF milk as a basic dairy ingredient for yogurt is consistent with our proposed rule that allows the use of UF milk in standardized cheese and cheese products (70 FR 60751, October 19, 2005). The comment said that the addition of these ingredients does not adversely affect yogurt characteristics or safety.

(Response 12) The current yogurt standard (§ 131.200(c)) lists cream, milk, partially skimmed milk, or skim milk as the basic dairy ingredients. Proposed § 131.200(b) would expand the list by allowing the reconstituted versions of these ingredients. Reconstituted versions are concentrated or dry forms of milk to which water may be added, in a sufficient quantity to reconstitute the dry or concentrated material to fluid form.

The use of fluid UF milk and its dried products as basic ingredients in yogurt is not consistent with the basic nature of yogurt. Fluid UF milk and its dried products are distinctly different from milk and dried milk, respectively. The process of ultrafiltration selectively removes not only water, but also lactose, minerals, and water-soluble vitamins, resulting in a compositionally different ingredient. The use of UF milk also affects the essential characteristics of yogurt, which is a fermented product from milk. The lactose in milk, which is significantly reduced in UF milk, is the substrate for the fermentation process by the bacterial culture in the

production of yogurt. In addition, the rationale underlying our 2005 proposal for use of fluid UF milk in standardized cheeses and related cheese products (70 FR 60751) is not applicable to the use of fluid UF milk as a basic ingredient in yogurt because cheese and yogurt have fundamentally different production procedures and are different in their basic nature and essential characteristics. Moreover, the data and evidence the Agency relied on to support its tentative conclusions in the 2005 proposal were specific to standardized cheeses and related cheese products. For these reasons, we decline to revise § 131.200(b) to add fluid UF milk and its dried products for use as basic dairy ingredients in yogurt.

We wish to make clear that the concentrated or dried ingredient used for reconstitution must be such that the reconstituted form does not differ significantly from the respective cream, milk, partially skimmed milk, or skim milk (*i.e.*, has reestablished the same specified water:solids ratio). For example, concentrated milk (§ 131.115) and dry whole milk (§ 131.147) are appropriate ingredients to reconstitute to produce reconstituted milk. Nonfat dry milk (§ 131.125) is an appropriate ingredient to be used with water to produce reconstituted skim milk. Although fluid UF milk, its resulting dried derivatives, and SMP are not basic dairy ingredients under § 131.200(b), if safe and suitable, they can be used in yogurt as optional dairy ingredients under § 131.200(c). Moreover, limiting the basic dairy ingredients to those in § 131.200(b) is consistent with producing yogurt with the taste, flavor, and texture that consumers expect.

(Comment 13) Two comments agreed on limiting the use of whey and whey ingredients only as optional dairy ingredients in § 131.200(c). In addition, one comment strongly opposed the use of whey protein concentrates as a basic dairy ingredient, citing negative impacts on yogurt quality. One comment supported the use of whey protein concentrate and whey protein isolate as basic dairy ingredients in yogurt making, citing their nutritional, functional, and taste properties. However, the comment did not provide data or evidence to support these assertions.

(Response 13) As discussed in the proposed rule (74 FR 2443 at 2453), the use of whey protein concentrates, whey protein isolate, or other similar products as the basic dairy ingredients for yogurt may result in products that are not consistent with the taste, flavor, or texture expected by consumers. There are no new data or information from our

own research or provided in the comments to cause us to change this position. Therefore, as noted in response 12, the final rule permits only the use of cream, milk, partially skimmed milk, skim milk, or the reconstituted versions of these ingredients as the basic dairy ingredients in the manufacture of yogurt under § 131.200(b).

E. Section 131.200(c)—Optional Dairy Ingredients

The proposed rule at § 131.200(c) would allow the optional use of other safe and suitable milk-derived ingredients to increase the nonfat solids content of the food, provided that the ratio of protein to total nonfat solids of the food and the protein efficiency ratio of all protein present are not decreased as a result of the use of such ingredients.

Proposed § 131.200(a), would specify that yogurt is a food produced by culturing one or more of the basic dairy ingredients (§ 131.200(b)) and any of the optional dairy ingredients (§ 131.200(c)) with the characterizing bacterial culture. We discussed that any optional safe and suitable milk-derived ingredients can be used to increase the milk solids not fat of the food above the minimum required 8.25 percent (74 FR 2443 at 2450 through 2451).

(Comment 14) The proposed rule, at § 131.200(c), would allow the use of other safe and suitable milk-derived ingredients to increase the nonfat solids content of the food, provided that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present is not decreased as a result of adding such ingredients.

Several comments agreed with the proposed limit on the use of optional dairy ingredients. However, other comments opposed the use of ingredients other than fluid milk in the manufacture of yogurt. Some comments said that, without a defined list of optional safe and suitable milk-derived ingredients, processors would make determinations based on financial advantages rather than consumer preferences.

Many comments strongly opposed the use of milk-derived ingredients such as milk protein concentrate (MPC) and whey products. The comments expressed concerns about the safety and nutritional quality of such ingredients, the adverse effect on yogurt quality, and the negative economic impact on the U.S. dairy farmers. Some comments opposed the use of MPC, which the comments considered to be an inferior, unregulated, and mostly imported dairy ingredient. Further, the comments opposing the use of MPC questioned

whether we performed sufficient evaluations to understand the safety and nutritional quality of MPC. The comment argued that, because MPC is not allowed in other standardized dairy foods, it should not be allowed in yogurt. Some comments indicated that MPC has not been classified as “generally recognized as safe” (GRAS) (21 CFR 170.3 and 170.30; sections 201(s) and 409 of the FD&C Act) and that, according to a 2001 report from the U.S. Government Accountability Office, MPC is not nutritionally equivalent to fluid milk (Ref. 10).

(Response 14) Like any other food ingredient, optional milk-derived ingredients (§ 131.200(c)) used in yogurt must be safe and suitable. Section 130.3(d) (21 CFR 130.3) defines safe and suitable ingredients used in the manufacture of standardized foods. The safe and suitable ingredient must perform an appropriate function in the food when used (§ 130.3(d)(1)) and be used at a level no higher than necessary to achieve its intended purpose in that food (§ 130.3(d)(2)).

We disagree with the comments that only permitting the use of fluid milk or establishing a defined list of optional dairy milk-derived ingredients is necessary to manufacture the taste, aroma, appearance, and nutritional characteristics of yogurt. We do not find a technical reason to exclude one or more types of milk-derived ingredients as optional dairy ingredients if the use of these ingredients complies with all our applicable regulations, including § 130.3(d)(1) and (2).

We disagree with comments regarding safety or the GRAS status of MPC. Under FDA’s GRAS notification program, a person may notify FDA of a conclusion that a substance is GRAS under the conditions of its intended use in human food (21 CFR part 170, subpart E). FDA has evaluated GRAS notices for certain functional uses of MPC in food, including yogurt, and did not question the notifier’s conclusion that these uses are GRAS (Ref. 11). FDA is not aware of any information at this time that calls into question the safety of the use of MPC in yogurt. We note that it is a manufacturer’s responsibility to ensure that food ingredients are safe and are otherwise in compliance with all applicable requirements. Furthermore, any optional dairy ingredients, such as MPC, must be “safe and suitable” according to our regulations whether they are sourced domestically or imported. This means, in relevant part, that any use must be authorized under section 409 of the FD&C Act or be exempt from regulation as a food additive (§ 130.3(d)).

We likewise disagree with the comment’s position that MPC is a substandard ingredient. MPC and other non-milk dairy ingredients can be used as optional ingredients, provided the protein efficiency ratio of all protein present must not be decreased as a result of adding optional ingredients. Milk protein concentrates are made by concentrating fluid skim milk using ultrafiltration and spray drying. Because both casein and whey proteins are concentrated in this process, the ratio of casein to whey protein remains nearly the same as the ratio of these components in fluid milk (Ref. 12). Although the comments provided no data to support that yogurt containing MPC in addition to the required dairy ingredients are less acceptable or differ in taste, flavor, or texture to yogurts produced with other optional dairy ingredients, the longtime use of MPC and other optional dairy ingredients in yogurt throughout the marketplace indicates that the basic nature and essential characteristics of yogurt are maintained in producing acceptable and desired yogurt products.

Regarding the use of imported ingredients, we have programs in place, for example inspecting foods that are imported to the United States from other countries, to make sure they comply with government standards and meet the same safety requirements as foods produced within the United States. In general, a foreign or domestic facility that manufactures, processes, packs, or holds food for consumption in the United States and has to register with FDA under section 415 of the FD&C Act (21 U.S.C. 350d) is subject to the requirements related to preventive controls of the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food rule (21 CFR part 117). Compliance with these regulations helps ensure that imported dairy ingredients, including imported MPC, are as safe as domestically produced dairy ingredients.

The comment stating that the use of MPC or whey products as an optional dairy ingredient in yogurt would have a negative economic impact on U.S. dairy farmers did not provide specific information as to how the use of these ingredients would have a negative economic impact. In addition, we note that Congress did not include economic consequences for industry (such as suppliers or manufacturers) as the statutory basis for establishing standards of identity. Section 401 of the FD&C Act permits FDA to establish food standards, and consequently to amend or revoke them, only when doing so

“promotes honesty and fair dealing in the interest of consumers.”

Regarding the comment concerning MPC’s effect on nutritional quality, the use of MPC does not diminish the nutritional quality of yogurt. Under the proposed rule, at § 131.200(c), the ratio of protein to total nonfat solids of the food and the protein efficiency ratio of all protein present in yogurt must not be decreased as a result of adding the optional dairy ingredients. This provision ensures that the milk protein amount and protein quality are not reduced after the addition of optional dairy ingredients and should address the other concerns regarding the use of MPC on nutritional quality. This provision is now codified at § 131.200(c) in the final rule.

Although the proposed rule would require the minimum of 8.25 percent milk solids not fat at § 131.200(a), and as discussed in the preamble (74 FR 2443 at 2448), the proposed rule at § 131.200(c) did not specify this minimum when describing other safe and suitable milk-derived ingredients that may be used to increase the nonfat solids content of the food. Thus, on our own initiative, for added clarity, in § 131.200(c) we specify the minimum of 8.25 percent milk solids not fat above which other safe and suitable milk derived ingredients may be used to increase the milk solids not fat content of the food as required in § 131.200(a).

Additionally, we note that the phrase “nonfat solids content” in proposed § 131.200(c) would mean the same as the phrase “milk solids not fat” in the proposed § 131.200(a). Therefore, to be consistent in the terms used, we have, on our own initiative, revised § 131.200(c) to use the phrase “milk solids not fat.”

(Comment 15) One comment said that the addition of optional dairy ingredients after culturing should not be permitted for safety concerns, such as microbial contamination. Other comments asked us to permit the addition of optional dairy ingredients after culturing if the optional dairy ingredients are pasteurized and handled in a manner to prevent post-pasteurization contamination. The comments gave cottage cheese as an example of a standardized food in which optional dairy ingredients may be added after culturing; for example, pasteurized cottage cheese dressing is added to the cultured curd.

One yogurt producer stated that adding pasteurized milk-derived ingredients after culturing would conserve water and energy and would provide production flexibility. The comment stated that characterizing the

yogurt, e.g., by adjustment of the fat content, at the end of the process rather than the beginning, would reduce water usage for cleaning blend storage silos and flushing lines between blends. The comment also stated that energy costs would be reduced because the pasteurizer could operate more efficiently with fewer stoppages for changeovers between blends.

(Response 15) We decline to revise the rule to permit optional dairy ingredients after culturing, regardless of whether the optional dairy ingredients are pasteurized and handled in a manner to prevent post-pasteurization contamination. The goal of the standard of identity is to preserve the basic nature and the essential characteristics of yogurt consistent with consumer expectations. Yogurt has long been considered a cultured dairy product where the dairy ingredients are combined and cultured together. As we explained in response 5, the yogurt standard must ensure that the cultured and fermented yogurt reaches the desired titratable acidity 0.7 or maximum pH of 4.6 solely by the fermentation action of bacterial culture. This ensures not only the taste and texture characteristics of yogurt are developed, but also maintains the product's safety and characteristics. Unlike cottage cheese, adding optional dairy ingredients after culturing is not consistent with the development of yogurt's characteristic flavor and acidity. Because more than 90 different compounds are responsible for the flavor and aroma of fermented yogurt (Ref. 3), it is essential that the dairy ingredients be cultured together.

Likewise, regardless of the potential to conserve water and energy in manufacturing, the addition of pasteurized milk-derived ingredients after culturing at the end of the process, rather than the beginning, may negatively affect the essential characteristic flavor and aroma of yogurt. Therefore, we decline to revise the rule to permit the addition of milk-derived ingredients after culturing.

(Comment 16) One comment agreed with our proposal to not require a minimum amount of dairy ingredients. Another comment stated that we should set a percentage higher than 51 percent because, according to the comment, yogurt should be mostly made of dairy ingredients.

(Response 16) As explained in the proposed rule, the yogurt standard requires a minimum milkfat of 3.25 percent and a minimum of milk solids not fat of 8.25 percent before the addition of bulky flavoring ingredients (74 FR 2443 at 2447). As noted

previously, the 3.25 percent minimum milkfat requirement is consistent with the USDA FoodData Central database for the total fat content of "yogurt, plain, whole milk" (3.25 grams/100 gram serving or 3.25 percent) (Ref. 2). With respect to the minimum milk solids not fat, a minimum of 8.25 percent is consistent with the standards found in fluid milk. Both of these minimum requirements contribute to yogurt's characteristic texture. We noted in the proposed rule that the yogurt standard currently requires that the basic ingredients of yogurt be either milk or certain milk-derived ingredients and that yogurt must contain a specified minimum amount of milk solids not fat (74 FR 2443 at 2453). We did not propose to require a minimum amount of dairy ingredients in yogurt because the existing yogurt standard (§ 131.200(a), (b), and (c)) adequately ensures that appropriate amounts of dairy ingredients are used in the manufacture of yogurt (id.). Therefore, we decline to require a minimum percentage amount of dairy ingredients in yogurt.

F. Section 131.200(d)—Other Optional Ingredients

The proposed rule, at § 131.200(d), would allow other optional safe and suitable ingredients in the manufacture of yogurt, specifically cultures in addition to the characterizing bacterial cultures, sweeteners, flavoring ingredients, color additives, stabilizers, emulsifiers, and preservatives. In addition, the proposed rule would revoke the provisions on optional addition of vitamins A and D (74 FR 2443 at 2454).

(Comment 17) Most comments generally supported the use of safe and suitable ingredients, specifically cultures, in addition to the characterizing bacterial cultures. The comments stated that explicitly providing for the use of other optional safe and suitable bacterial cultures provides regulatory clarity for the use of microorganisms such as probiotic strains in yogurt products. One comment also stated that the proposal provides industry flexibility while maintaining the product's basic nature and essential characteristics.

(Response 17) We are finalizing § 131.200(d)(1) without change.

(Comment 18) The proposed rule, at § 131.200(d)(2), would allow the use of "sweeteners" (rather than "nutritive carbohydrate sweeteners") as an optional ingredient, to permit the use of any safe and suitable sweetening ingredient rather than certain nutritive carbohydrate sweeteners. We explained

that the proposed changes would allow consumers to still be informed of the presence of the sweetening ingredient through its declaration by its common or usual name in the ingredient statement of the yogurt (74 FR 2443 at 2452). However, in response to the NYA petition's request for the "sweetener being declared in the ingredient statement of the food so that non-nutritive sweeteners may be used in yogurt without a specific declaration of its presence in the name of the food," we tentatively concluded that there is no basis to make this change (74 FR 2443 at 2451 through 2452).

Several comments supported the change to "sweeteners," stating that there should be no requirement for the declaration of nonnutritive sweeteners in the name of the food because consumers would be adequately informed of the presence of a sweetening ingredient through the declaration by its common or usual name in the ingredient statement of the yogurt. The comments also stated that amending the rule to refer to sweeteners rather than a specific list of nutritive carbohydrate sweeteners would provide manufacturing flexibility, encourage more low-calorie yogurt options for consumers, and be consistent with the sweetener provision in the standard of identity for ice cream and frozen custard (21 CFR 135.110), which refers to "safe and suitable sweeteners."

However, other comments opposed a change to "sweeteners" as an optional ingredient. Some comments opposed the use of nonnutritive sweeteners in the yogurt standard of identity because of perceived safety concerns, with some opposing the use of specific artificial sweeteners in yogurt. For example, some comments said that people with sensitivities to a specific artificial sweetener would be unaware the product contained the specific artificial sweetener and could be adversely affected. Other comments stated that, if nonnutritive sweeteners are used, they must be labeled in such a way that consumers are adequately and accurately informed. Several comments would require listing nonnutritive sweeteners in the ingredient statement.

(Response 18) We have decided not to revise § 131.200(d)(2) to specify the use of "sweeteners" in yogurt rather than "nutritive carbohydrate sweeteners." If we were to amend § 131.200(d)(2) to refer to "sweeteners," then both nutritive carbohydrate sweeteners and nonnutritive sweeteners would be optional ingredients under the yogurt standard. Consequently, manufacturers could use nonnutritive sweeteners in yogurt to reduce calories without

making a nutrient content claim. This is not what we had intended under the regulatory framework of § 130.10 after NLEA was enacted.

We have decided that nonnutritive sweeteners should only be permitted when making a nutrient content claim and therefore when the product is subject to the general definition and standard in § 130.10. As such, products containing nonnutritive sweeteners, but that otherwise comply with the requirements in § 131.200, are not the standardized food “yogurt” and are different standardized foods (e.g., “reduced calorie yogurt”) under § 130.10. The name of each of these foods must be prominently displayed in the statement of identity on the product label in accordance with § 101.3. We note that this approach is consistent with the approach under our current regulations as § 130.10 permits deviations to §§ 131.200, 131.203, and 131.206 in order to comply with a nutrient content claim defined by regulation (e.g., “reduced calorie”).

We further note that, under this approach, products deviating from § 131.200 due to the use of nonnutritive sweeteners are not required to declare the presence of the nonnutritive sweeteners in the name or statement of identity of the food. Instead, § 130.10 requires them to bear the nutrient content claim achieved by use of nonnutritive sweeteners in the name or statement of identity. We believe this approach will address comments concerning the presence and disclosure of artificial sweeteners while also providing manufacturers flexibility to make modified yogurt products with nonnutritive sweeteners. Unlike the proposed rule, the final rule does not permit the use of nonnutritive sweeteners in yogurt under § 131.200(d)(2). However, under § 130.10, products marketed with a nutrient content claim in the name of the food (e.g., “reduced calorie yogurt”) will signal to consumers that the food differs from “yogurt,” “lowfat yogurt,” and “nonfat yogurt” and contains nonnutritive sweeteners. Consumers will continue to be informed about the presence of specific nonnutritive sweeteners by their declaration under their common or usual names in the ingredient statement on the label, as required by § 101.4(a).

We have also considered comments concerning safety. We consider the safety of nonnutritive sweeteners as part of the food additive review process or GRAS notification process. There is no evidence to indicate that nonnutritive sweeteners, either as approved food additives or as GRAS substances in

yogurt, are unsafe when used in modified yogurt products. We understand that some consumers may have sensitivities to artificial sweeteners. As explained above, the name or statement of identity of the product will put consumers on notice about the presence of artificial sweeteners and the particular sweetener can be confirmed by referencing the ingredient statement.

(Comment 19) Some comments asked us to require prominent declaration or display (e.g., in large type on the principal display panel) of nonnutritive sweeteners on yogurt containers in addition to listing the nonnutritive sweeteners in the ingredient statements.

(Response 19) We do not agree that the name of the nonnutritive sweetener should be prominently displayed on the yogurt containers because, under § 130.10, a yogurt product with nonnutritive sweeteners will bear a nutrient content claim, such as “reduced calorie,” in its statement of identity. Section 101.3(d) requires that the statement of identity be presented in bold type on the principal display panel, in a size reasonably related to the most prominent printed matter on such panel, and in lines generally parallel to the base on which the package rests as it is designed to be displayed. The nutrient content claim will signal to consumers the presence of nonnutritive sweeteners and prompt consumers to check the ingredient statements for the types of nonnutritive sweeteners used. Disclosure of nonnutritive sweeteners in the ingredient statement, rather than the name or statement of identity, is consistent with the labeling of other foods made with nonnutritive sweeteners. Nonnutritive sweeteners are declared by their common or usual names in the ingredient statement on the food labels in accordance with § 101.4(a).

In some instances, specific requirements are necessary for the safe use of a nonnutritive sweetener. The conditions for including this information on the label and how and where this information is to be presented on the label are established in the relevant food additive regulations. For example, labels of food that contain aspartame must bear the statement “PHENYLKETONURICS: CONTAINS PHENYLALANINE,” either on the principal display panel or on the information panel, in accordance with § 172.804 (21 CFR 172.804).

Other than what is provided in these regulations, we do not see a basis to require disclosure of nonnutritive sweeteners other than in the ingredient statement. Therefore, we decline to

require the name of the nonnutritive sweetener be prominently displayed on the yogurt container. However, manufacturers may declare, voluntarily, on the principal display panel that the product is artificially sweetened or is made with nonnutritive sweeteners as long as the declaration is truthful and not misleading.

(Comment 20) One comment opposed the use of high fructose corn syrup (HFCS) in yogurt.

(Response 20) HFCS is a nutritive carbohydrate. HFCS is affirmed as GRAS and can be used in food with no limitation other than current good manufacturing practice (§ 184.1866 (21 CFR 184.1866)). The comment did not provide any data or other information to support prohibiting the use of HFCS in yogurt, so we decline to revise the rule to exclude HFCS as a sweetener.

(Comment 21) The proposed rule would revise § 131.200(d)(5) to permit the use of safe and suitable emulsifiers in addition to stabilizers as optional ingredients in the manufacture of yogurts.

A few comments opposed the use of emulsifiers and questioned the need for these ingredients in yogurt. Other comments supported the use of emulsifiers in yogurt, indicating that this would allow industry more flexibility in formulating products.

(Response 21) There are no data suggesting that emulsifiers pose any safety or characteristic concerns in yogurt, provided they are used within good manufacturing practice as described in 21 CFR 172.5(a) and within limitations specified by our relevant food additive regulations or are GRAS. Therefore, we decline to remove emulsifiers as an optional ingredient in yogurt. However, to clarify that stabilizers and emulsifiers are two different functional classes, we have, on our own initiative, decided to list stabilizers and emulsifiers separately as § 131.200(d)(5) and (6), respectively. We also have renumbered § 131.200(d)(6) as § 131.200(d)(7).

(Comment 22) The proposed rule, at § 131.200(d)(6), would permit preservatives as an optional ingredient in yogurt. Some comments supported permitting the use of safe and suitable preservatives as optional ingredients in the manufacture of yogurt and stated that the use of preservatives should not be limited only to heat-treated yogurt. Other comments opposed the use of any preservatives.

(Response 22) The proposed rule would not limit the use of preservatives to heat-treated yogurt and would, instead, allow the use of preservatives for all types of yogurt. The comments

that opposed the use of preservatives did not provide any data or information to support their opposition, and we do not have any data that indicate that appropriate use of preservatives has an adverse effect on the characteristics of yogurt, particularly in the case of yogurt that is heat-treated after culturing to have an extended shelf-life. Therefore, we decline to revise § 131.200(d)(6) regarding the use of preservatives as an optional ingredient in yogurt, but we have renumbered the section in the final rule as § 131.200(d)(7) (see response 21).

(Comment 23) The proposed rule would revoke § 131.200(b), which provides for optional addition of vitamins A and/or D in yogurt, and revoke § 131.200(f)(1)(iii), which pertains to labeling of yogurt that contains added vitamins A and D. The proposed rule explained, in part, that the provision for the optional fortification of yogurt with vitamins A and D was established in 1981 before the implementation of the NLEA and the adoption of the certain nutrient content and relative claims regulations, including § 101.54. We explained in the proposed rule that we believed it was appropriate to apply the provisions of § 101.54(e) to vitamins A and D fortification of yogurt (74 FR 2443 at 2454).

We invited comment on whether we should retain the current optional vitamin addition provisions of § 131.200(b) and, if so, what the justification for retaining these provisions would be, and the appropriateness of applying § 101.54(e) to yogurt fortified with vitamins A and/or D. One comment agreed with removing the provisions pertaining to optional addition of vitamins A and D.

However, other comments asked us to retain the current optional vitamin fortification provisions and the associated labeling provision. The comments said that, even though such provisions are not consistent with the NLEA and the nutrient content claim regulations, optional vitamins A and D fortification is a longstanding practice for the yogurt industry and is consistent with the standards of identity for other milk products in 21 CFR part 131.

Another comment said we should revise the amounts of vitamins A and D fortification based on percentages of recommended Daily Values (DV) rather than specific levels per quart. The comment recommended we modernize the optional vitamin A addition of not less than 10 percent DV per RACC and optional vitamin D addition of not less than 25 percent DV per RACC in the final rule.

(Response 23) Given the yogurt industry's current fortification practice and apparent consumer acceptance of optional fortification with corresponding ingredient declaration, the final rule does not remove the provisions concerning the optional addition of vitamins A and D. For these reasons, the provisions for optional addition of vitamins A and D remain part of the yogurt standard; however, because the final rule also reorganizes and renumbers the provisions in § 131.200, we have placed the provisions regarding optional vitamin addition in § 131.200(d)(8).

We believe that modernization of the yogurt standard of identity should include bringing the outdated vitamins A and D fortification provisions in conformity with the way in which vitamins are now referenced based on percentages of recommended DV rather than specific levels per quart. Therefore, the final rule, at § 131.200(d)(8), provides for the optional addition of vitamin A if added at not less than 10 percent Daily Value per RACC, and/or the optional addition of vitamin D if added at not less than 25 percent Daily Value per RACC.

In addition, we decline to revoke the labeling requirements associated with optional vitamins A and/or D addition. To inform consumers about the optional addition of vitamins A and/or vitamin D, these requirements remain part of the yogurt standard in § 131.200(f)(1)(iii).

(Comment 24) The proposed rule discussed that the standards of identity for yogurt, lowfat yogurt, and nonfat yogurt do not permit the optional use of any safe and suitable ingredient for a nutritional or functional purpose. We explained that while the NYA petition asked us to revise our regulations to allow for such ingredients and while comments to the ANPRM both favored and opposed the NYA recommendation, we decided that there was not a need for a broad provision to permit any safe and suitable ingredient for a nutritional or functional purpose (74 FR 2443 at 2453).

The comments to the proposed rule were mixed on whether we should add a broad provision permitting the use of any safe and suitable ingredient that serves a nutritional or functional purpose. Some stated that such an approach would help maintain the integrity of yogurt. Other comments said that any safe and suitable ingredient should be allowed to provide flexibility and to promote innovation. One comment was concerned that yogurt bearing nutrient content claims would no longer fall under the standard of identity without a provision that would

allow the use of any safe and suitable ingredient for a nutritional or functional purpose. Another comment emphasized that lactic acid and other acidulants as functional ingredients should not be allowed.

(Response 24) As we explained in the proposed rule, our existing regulatory framework governing standardized foods already provides for the addition of substances for a nutritional purpose (74 FR 2443 at 2453). As for the use of ingredients for a functional purpose, the final rule, at § 131.200(c), provides for the use of optional dairy ingredients to increase the nonfat solids content of food under certain conditions. The final rule, at § 131.200(d), also provides for the use of specific functional categories of ingredients such as emulsifiers and stabilizers. We revised § 131.200 to retain the optional addition of vitamins A and/or D. Section 131.200(d)(8) now provides for optional addition of these vitamins as in our current standard of identity for yogurt but has been revised to specify the amounts of added vitamins A and D based on percentages of DV per RACC rather than International Units per quart.

Although § 131.200(c) and (d) permit the use of certain optional ingredients for nutritional or functional purposes in yogurt, lactic acid and other acidulants are not permitted as other optional ingredients under § 131.200(d). Yogurt is produced by culturing the basic dairy ingredients and any optional dairy ingredients with a characterizing lactic acid-producing bacterial culture, and not through the addition of lactic acid or other acidulants (see response 6).

G. Section 131.200(e)—Methods of Analysis

The current standard of identity for yogurt lists the methods of analysis for milkfat content, total solids content, and titratable acidity that are from the "Official Methods of Analysis of AOAC International," 13th Ed. (1980). The proposed rule, at § 131.200(e), would update the referenced methods of analysis to "Official Methods of Analysis of AOAC International (AOAC Methods)," 18th edition, 2005. The AOAC Methods have been updated twice since the publication of the proposed rule. The latest version is the 21st edition, 2019. Therefore, on our own initiative, we have revised § 131.200(e) to refer to the 21st edition of the AOAC Methods.

The proposed rule inadvertently deleted the milkfat method of analysis from § 131.200(e). Therefore, on our own initiative, we have revised § 131.200(e) by restoring the method of analysis for milkfat referencing the

updated modified Mojonniether extraction method in section 33.2.26 of the AOAC Methods: Official Method 989.05. Thus, we have revised § 131.200(e)(1) by adding paragraph (i) to identify the AOAC Official Method 989.05 for milkfat content and renumbering the remaining paragraphs accordingly.

The proposed rule, at § 131.200(e)(1)(i) and (ii), would establish the methods of analysis for milk solids not fat and for titratable acidity, respectively.

We did not receive comments on these provisions. However, as explained previously, we have renumbered these provisions as § 131.200(e)(1)(ii) and (iii), respectively, because we have restored the inadvertent deletion of the method of analysis for milkfat at § 131.200(e)(1)(i).

Proposed § 131.200(e)(2) would adopt the potentiometric method for pH as described in § 114.90(a) (21 CFR 114.90(a)).

We did not receive comments on the method for pH that indicated a need to change methodology, and we have finalized § 131.200(e)(2) without change.

(Comment 25) Proposed § 131.200(e)(3) would discuss the measurement of live and active cultures and refer to the use of the aerobic plate count method described in Chapter 3 of FDA's Bacteriological Analytical Manual, January 2001 edition (the BAM method) (Ref. 13). Several comments objected to the use of the BAM method. The comments indicated that the BAM method is not appropriate for the accurate enumeration of live and active cultures in yogurt. The comments recommended that, for accuracy and repeatability, live and active cultures should be determined by the method described in the International Organization for Standardization (ISO) 7889/International Dairy Federation (IDF) 117:2003 (ISO 7889/IDF 117:2003), "Yogurt-Enumeration of characteristic microorganisms—colony count-technique at 37 °C" (Ref. 14).

(Response 25) We evaluated the BAM method and the ISO 7889/IDF 117:2003 method. We agree that the BAM method is a general reference for determining plate counts and is not designed specifically for the measurement of characterizing cultures in yogurt products. We also agree that the ISO 7889/IDF 117:2003 method, which is specifically designed to measure the characteristic microorganisms in yogurt, is the appropriate method. The ISO 7889/IDF 117:2003 method is also referenced as the appropriate method to enumerate characterizing

microorganisms in yogurt in the *Standard Methods for the Examination of Dairy Products* (Ref. 15). Therefore, we have revised § 131.200(e)(3) and replaced the proposed BAM method with the ISO 7889/IDF 117:2003 method incorporated by reference in the final rule.

(Comment 26) One comment said that, for other safe and suitable organisms, individual yogurt manufacturers should bear the responsibility of using validated methods to enumerate such bacteria to substantiate label claims.

(Response 26) We agree that manufacturers using other safe and suitable bacterial cultures have or should have the knowledge to determine the most appropriate method to enumerate these organisms. Therefore, the final rule does not specify methods to measure other safe and suitable bacterial cultures to substantiate label claims.

H. Section 131.200(f)—Nomenclature

The proposed rule would revise § 131.200(f) by: (1) Stating that the word "sweetened" must accompany the name of the food wherever it appears on the principal display panel or panels if a "sweetener" (rather than a nutritive carbohydrate sweetener) is added without the addition of characterizing flavor; and (2) providing for the optional labeling of "contains live and active cultures."

As discussed in responses 18, 19, and 20, we have decided to retain the term "nutritive carbohydrate sweeteners" in § 131.200(d)(2) instead of using the term "sweeteners." Likewise, we have decided to retain "nutritive carbohydrate sweetener" in § 131.200(f)(1)(i) rather than use the term "sweetener." The requirement in § 131.200(f)(1)(i) continues to apply only to nutritive carbohydrate sweeteners and is not amended under this final rule. Under § 130.10, nonnutritive sweeteners can be used in the manufacture of yogurt products that deviate from the standard of identity for yogurt in order to meet an expressed nutrient content claim defined by regulation (e.g., "reduced calorie"). The nutrient content claim is part of the name or the statement of identity of the food (e.g., "reduced calorie yogurt") and signals to consumers that the food differs from yogurt and contains nonnutritive sweeteners.

As discussed in responses 27, 28, and 29 regarding the labeling of yogurt containing live and active cultures, the final rule revises the proposed nomenclature provisions relating to heat-treated yogurt. Changes in the final

rule at § 131.200(a), (b), (c), and (d) necessitate additional changes in § 131.200(f) regarding nomenclature provisions in the final rule.

(Comment 27) Currently, § 131.200(f)(1)(ii) requires that, if the yogurt product is heat-treated after culturing, the parenthetical phrase "(heat-treated after culturing)" must follow the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name. The proposed rule would revise § 131.200(f)(1)(ii) by requiring the parenthetical phrase "(heat-treated after culturing)" to appear after the name of the food if the dairy ingredients have been heat-treated after culturing.

One comment opposed modifying the labeling requirements for heat-treated yogurt. The comment also opposed the requirement of any phrase on the label of heat-treated yogurt that would classify it as one that does not contain live and active cultures, arguing that there is no difference in the effect on the human body between the consumption of yogurt with live and active cultures and those without. Other comments expressed concerns that consumers may not understand the statement "heat-treated after culturing," although one comment did agree with the proposed rule. Another comment cited a consumer survey that evaluated consumer understanding of the phrase "heat-treated after culturing." The comment claimed that the cited survey indicated that the meaning of this phrase is not clear to most consumers and does not inform consumers that the treatment destroys some or all the bacterial cultures.

Many comments opposed heat treatment after culturing but said that, if heat treatment after culturing is allowed, the product should be clearly labeled (see comment 7). One comment would require a statement on the package to indicate that the product "does not contain live and active cultures."

(Response 27) As discussed in response 7, many consumers are interested in knowing whether the yogurt product they purchase contains live and active cultures. The term used in the proposed rule "heat-treated after culturing" is a description of a manufacturing process and does not directly inform consumers how the manufacturing process affects the properties of finished yogurt product. Apart from the nutritional aspect, the beneficial effect of yogurt or yogurt cultures is reportedly either lost (Ref. 16) or reduced (Refs. 17 to 20) when the

yogurt is heat-treated after culturing. In the proposed rule, we recommended that manufacturers may consider using additional truthful and non-misleading statements, such as “does not contain live and active cultures,” in the labeling of their heat-treated yogurt products to help consumers distinguish heat-treated yogurt from traditional yogurt (74 FR 2443 at 2450). We evaluated the consumer survey results and conclude that the survey findings support the belief that many consumers do not understand the meaning of the term “heat-treated after culturing” (Ref. 6). We find that the term “heat-treated after culturing” does not adequately inform consumers whether the yogurt still contains live and active cultures in the final product. To prevent the labeling of yogurt from being misleading under section 403(a)(1) and 201(n) of the FD&C Act, the phrase “does not contain live and active cultures” should appear on the label of yogurt instead of “heat-treated after culturing” when the final product does not contain live and active cultures. Therefore, we have revised § 131.200(f)(1)(ii) to require the phrase “does not contain live and active cultures” if the dairy ingredients have been treated after culturing to inactivate viable microorganisms.

(Comment 28) One comment stated that new and emerging thermal treatment technologies that are less severe than pasteurization conditions have been used to enhance the sensory profile of a product or for acidity purposes. The comment asked us to clarify that, if these heated yogurt products still contain a minimum of 10^7 CFU/g live and active cultures at the time of manufacture, they do not have to bear the statement indicating that they have been heat-treated or do not contain live and active cultures.

(Response 28) We understand that the impact of a heat treatment will vary depending on heating temperature and holding time. We agree that it would not be appropriate to require heated yogurt products with 10^7 CFU/g live and active cultures to bear the “does not contain live and active cultures” statement. As discussed in response 7, we realize that, in the future, new technologies other than heat treatment may be developed to inactivate viable microorganisms and thus extend a product’s shelf life. The “does not contain live and active cultures” statement should not be limited to only heat-treated yogurt. It would be appropriate for products that have not been heat-treated but have been treated with other alternative technologies to inactivate viable microorganisms, to bear the “does not contain live and active cultures”

statement to adequately inform consumers. Therefore, we have revised § 131.200(f)(1)(ii) to require that the phrase “does not contain live and active cultures” accompany the name of the food if the yogurt has been treated after culturing to inactivate viable microorganisms.

(Comment 29) A few comments requested that we require the statement “does not contain live and active cultures” to appear prominently on the label or in the same size, font, and color as the name of the food and in close proximity to the name of the food without intervening material.

(Response 29) Under § 131.200(f)(1)(ii), the phrase “does not contain live and active cultures” is required to accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in the name. We do not agree with the comments that the phrase “does not contain live and active cultures” must appear in the same size, font, and color as the name of the food. The comments did not demonstrate why use of the same size, font, and color as the name of the food would improve consumer attention to or understanding of the phrase.

I. Revoking the Standards of Identity for Lowfat Yogurt and Nonfat Yogurt

(Comment 30) Some comments supported revoking the standards of identity for lowfat yogurt and nonfat yogurt such that the standardized food yogurt under proposed § 131.200 could be modified to produce lower-fat versions of yogurt under § 130.10. (For purposes of this preamble, “lower-fat” versions of yogurt refers to products with less than 3.25 percent minimum fat level specified in § 131.200(a).) Other comments were concerned that there will be no standard of identity for these lower-fat versions of yogurt.

(Response 30) Revocation of § 131.203 and § 131.206 will result in lowfat yogurt and nonfat yogurt being covered under the general definition and standard of identity in § 130.10. This action will provide for consistency in the nomenclature and labeling of “lowfat” and “no fat” food products and help ensure “lowfat” yogurt meets consumer expectations. These foods, along with other lower-fat versions of yogurt, will be standardized foods with a standard of identity under this regulation. Because § 130.10 only permits specific deviations from the standardized food for which a lower-fat version substitutes, many requirements in the yogurt standard of identity will

apply to lower-fat versions and will help maintain the basic nature and essential characteristics of these products.

J. Compliance Date

(Comment 31) The proposed rule did not discuss when a final rule would become effective or when the compliance date for a final rule would occur.

One comment requested a 2-year implementation date for necessary label changes after the final rule. The comment indicated that revoking the standards of identity for lowfat yogurt and nonfat yogurt would require these products to be fortified to achieve nutrient equivalency. The comment also stated that the 2-year implementation date is consistent with the Uniform Compliance Date for label changes and will provide enough time for processors to deplete existing packaging inventory, reformulate products, install fortification equipment, and make the necessary label changes. Another comment asked us to align the compliance timeline of the final yogurt rule with that of a then-unpublished final rule to revise our Nutrition and Supplement Facts Label requirements (79 FR 11880, March 3, 2014). The comment said that companies could revise yogurt labels much more efficiently by making a single set of changes in response to both sets of requirements and minimize the economic impact of label changes.

(Response 31) The final rule is effective on July 12, 2021. The compliance date of this final rule is January 1, 2024, consistent with Uniform Compliance Date for final food labeling regulations that are issued in calendar years 2021 and 2022 (see 86 FR 462, January 6, 2021).

We decline to align the compliance date with that for the final Nutrition and Supplement Facts Label regulations. We note that the compliance date for the final Nutrition and Supplement Facts Label regulations is January 1, 2020, for manufacturers with \$10 million or more in annual food sales and January 1, 2021, for manufacturers with less than \$10 million in annual food sales (83 FR 19619, May 4, 2018). Thus, these compliance dates for the Nutrition and Supplement Facts Label regulation have already passed.

K. Amendments in 21 CFR 130.10

Revoking the standards of identity for lowfat yogurt and nonfat yogurt brings these foods under the coverage of the general definition and standard in § 130.10. For foods covered under the general definition and standard,

§ 130.10(b) requires nutrients to be added to restore nutrient levels so that the product is not nutritionally inferior to the standardized food as defined in 21 CFR parts 131 to 169. As discussed in the proposed rule, lowfat yogurt and nonfat yogurt have a lower vitamin A content than yogurt and therefore would be required under § 130.10(b) to be fortified with vitamin A to the same level as yogurt.

(Comment 32) One comment supported nutritional equivalence of lowfat yogurt and nonfat yogurt with yogurt under § 130.10(b), noting that the requirement would make these foods consistent with other foods modified under the general definition and standard. Another comment opposed mandatory fortification of lowfat yogurt and nonfat yogurt with vitamin A based on the costs of compliance for industry.

(Response 32) Requiring vitamin A fortification of lower-fat yogurt products under § 130.10(b) would not necessarily make these products consistent with other modified dairy foods. FDA has not enforced § 130.10(b) with respect to vitamin A fortification of lower-fat milk products covered under the general definition and standard (see *South Mt. Creamery, LLC v. United States FDA*, 438 F. Supp. 3d 236 (2020)). Moreover, as noted in the proposal, the contribution of yogurt to daily vitamin A intake is not expected to be altered significantly if the nutritional equivalency requirement in § 130.10(b) were to apply to lowfat yogurt and nonfat yogurt. Although yogurt consumption has increased in recent years, the contribution of vitamin A that would result from fortification of lower-fat yogurt products remains insignificant (Ref. 21). Thus, in light of our enforcement policy regarding vitamin A fortification of lower-fat milk products and the lack of public health impact from vitamin A fortification of yogurt, we are amending § 130.10(b) to exempt lower-fat yogurt products from vitamin A fortification.

This final rule revises § 130.10(b) to provide for the exemption. Manufacturers may choose to fortify lowfat yogurt and nonfat yogurt with vitamin A to the level in yogurt; however, they are not required to do so. If they choose to fortify with vitamin A under § 130.10(b), then vitamin A must be declared in the ingredient statement.

L. Incorporation by Reference

The final rule incorporates two references. As we explained in part IV.G, FDA is incorporating by reference three methods from the “Official Methods of Analysis of AOAC International,” 21st edition (2019). You

may purchase a copy of the material from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, USA, 301–924–7077 ext. 170. <https://www.aoac.org/official-methods-of-analysis-21st-edition-2019/>. The AOAC Methods have undergone rigorous scientific review and validation to determine the performance characteristics for the intended analytical application and fitness for purpose. Each of the following three methods includes specific instructions for performing the chemical analysis of a substance in a particular matrix.

- AOAC Official Method 947.05, Acidity of Milk Titrimetric Method, 21st edition, 2019, Vol. 1.

- AOAC Official Method 989.05, Fat in Milk Modified Mojonnier Ether Extraction Method, 21st edition, 2019, Vol. 1.

- AOAC Official Method 990.21, Solids-Not-Fat in Milk by Difference between Total Solids and Fat Contents, 21st edition, 2019, Vol. 1.

Also, FDA is incorporating by reference the International Organization for Standardization 7889:2003(E)/International Dairy Federation 117:2003(E) (ISO 7889:2003(E)|IDF 117:2003(E)), Yogurt—Enumeration of Characteristic Microorganisms—Colony-Count Technique at 37 °C, First edition, 2003–02–01. You may purchase a copy of the material from the International Organization for Standardization, ISO Central Secretariat, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland. +41 22 749 01 11. central@iso.org. ISO 7889|IDF 117:2003 specifies a method for the enumeration of characteristic microorganisms in yogurt by means of the colony-count technique at 37 degrees Celsius. The method is applicable to yogurts in which both characteristic microorganisms (*L. delbrueckii* subspecies *bulgaricus* and *S. thermophilus*) are present and viable.

V. Economic Analysis of Impacts

This rule is issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556 and 557, and is, therefore, exempt from the economic analysis requirements of Executive Order (E.O.) 12866 and E.O. 13563. We have examined the economic implications of this rulemaking on small businesses.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule may generate compliance costs for some small firms, we believe that this rule

would have a significant economic impact on a substantial number of small entities and is therefore subject to a final regulatory flexibility analysis (5 U.S.C. 604). The following analysis, in conjunction with the remainder of the preamble, constitutes our final regulatory flexibility analysis.

One requirement of the Regulatory Flexibility Act is a succinct statement of any objectives of the rule. As stated previously in the preamble, with this rule, we intend to amend the yogurt standard of identity and revoke the lowfat yogurt and nonfat yogurt standards of identity to promote honesty and fair dealing in the interest of consumers. The amendments are intended to modernize the current yogurt standard and allow for lowfat yogurt and nonfat yogurt to be covered under the general definition and standard to permit flexibility and provide for technological advances in yogurt production, while preserving the basic nature and essential characteristics of yogurt, lowfat yogurt, and nonfat yogurt consistent with consumer expectations and protecting consumer interests.

This rule would affect yogurt manufacturing firms in the Standard Industrial Classification (SIC) code 20260208 (“Yogurt Manufacturing”). The equivalent North American Industry Classification System (NAICS) code is 311511 (“Fluid Milk Manufacturing”). The Small Business Administration (SBA) defines a small business in NAICS code 311511 as a business with 500 or fewer employees. This rule will not affect firms that manufacture products such as frozen yogurt, dried yogurt-style mixes, or products that contain yogurt as an ingredient.

We searched the Dun and Bradstreet database for U.S. firms in SIC code 20260208 (“Yogurt Manufacturing”) and identified 450 firms. To exclude firms not engaged in the manufacture of yogurt, we performed an internet search of the name of each firm and identified frozen yogurt manufacturers. After excluding frozen yogurt manufacturers, we estimate that there are approximately 31 U.S. yogurt manufacturers, of which approximately 9, or 29 percent ($= 31 \times 0.29$), are small businesses per SBA definition.

We expect that three provisions of the final rule may require some small firms to change their current activity. The other provisions of the final rule provide additional flexibility to firms beyond that available under current requirements. For this analysis, we estimate costs for those provisions that may require some small firms to change

their current practices. We do not estimate costs for changing manufacturing practices in ways that would be newly permitted by the final rule as costs of the final rule.

The three provisions that we estimate will require some small firms to change their current practices are:

1. The requirement that yogurt have either a titratable acidity of not less than 0.7 percent expressed as lactic acid or a pH of 4.6 or lower (“Acidity Requirement”).

2. The requirement that yogurt bearing optional labeling statements such as “contains live and active cultures” must contain a minimum of 10^7 CFU/g of live and active cultures at the time of manufacture with a reasonable expectation that the yogurt will contain live and active cultures at a level of 10^6 CFU/g through the manufacturer’s assigned shelf life of the product, as well as the requirement that yogurt that is treated after culturing bear on its label the statement “does not contain live and active cultures” (“Claims Requirements”).

3. The revocation of the standards of identity for lowfat yogurt (§ 131.203) and nonfat yogurt (§ 131.206) (“Standards of Identity Revocation”).

The following analysis estimates the costs of each provision to small manufacturers.

1. The Acidity Requirement

The final rule requires that yogurt have either a titratable acidity of not less than 0.7 percent expressed as lactic acid or a pH of 4.6 or lower. We stated that we believed that all or nearly all yogurt currently on the market had a titratable acidity above the then-proposed minimum cutoff of 0.7 percent, usually in the range of 1.0 to 1.3 percent, and a pH level below the proposed maximum level of 4.6, usually ranging from 4.1 to 4.3. At the time, we estimated that the proposed acidity requirements would generate minimal or no compliance costs. We received no comments on this.

In the final rule, we require that yogurt have either a titratable acidity of not less than 0.7 percent expressed as lactic acid or a pH of 4.6 or lower. We still believe that all or nearly all yogurt currently on the market has a titratable acidity above the minimum cutoff of 0.7 percent titratable acidity, usually ranging from 1.0 to 1.3 percent, and a pH level below the proposed maximum level of 4.6, usually ranging from 4.1 to 4.3. We estimate that the Acidity Requirement would generate minimal or no compliance costs.

2. The Claims Requirements

Yogurt manufacturers who want to include the optional statement “contains live and active cultures” or similar claims on labels will be required to show that their yogurt contains at least 10^7 CFU/g of live and active cultures at the time of manufacture of the yogurt using analytical testing methods. Otherwise, such a claim cannot be made. In addition, yogurt products that are treated to inactivate viable microorganisms after culturing but do not currently bear the claim “does not contain live and active cultures” will be required to add this claim to labels. This was modified for clarity as the proposed rule would require yogurt products that are heat-treated after culturing to bear the claim “heat-treated after culturing” on their label and it would advise, but not require, that such yogurt products also bear the claim “does not contain live and active cultures” on their label.

Based on an analysis of yogurt UPCs using the online grocery shopping platform Peapod®, approximately 85 percent of yogurt UPCs currently make a “contains live and active cultures” or similar claim. Approximately 15 percent of yogurt UPCs make no such claims. We estimate that approximately 1,972 UPCs manufactured by small yogurt manufacturers, or equivalently 8 small yogurt manufacturers, will be affected by the Claims Requirement related to the “contains live and active cultures” or similar claim (“Claims Requirement A”) and approximately 348 UPCs manufactured by small yogurt manufacturers, or equivalently 1 small yogurt manufacturer, will be affected by the Claims Requirement related to the “does not contain live and active cultures” claim (“Claims Requirement B”).

Based on further analysis of yogurt UPCs using Peapod®, 56 percent of yogurt UPCs that make a “contains live and active cultures” or similar claim also make a claim that they meet the NYA standard for live and active cultures. The NYA’s standard of at least 10^8 CFU/g at the time of manufacture is higher than our standard of at least 10^7 CFU/g. We estimate that approximately 1,105 of the 1,972 UPCs that are affected by Claims Requirement A and are manufactured by small yogurt manufacturers will only need to incur analytical testing costs related to this Claims Requirement.

We do not know how many of the remaining 868 small manufacturer yogurt UPCs that are affected by Claims Requirement A meet this Claims Requirement. Therefore, we

conservatively estimate that none do, so that some of these UPCs will need to incur analytical testing costs and reformulation costs to prove that they meet the 10^7 live and active cultures standard. Others will need to incur relabeling costs associated with removing the “contains live and active cultures” or similar claims from labels. As we are not aware of data on these proportions, we estimate an even split between these possibilities, with approximately 434 UPCs incurring analytical testing and reformulation costs and approximately 434 UPCs incurring relabeling costs. Finally, we do not know how many of the 348 small manufacturer yogurt UPCs that do not make any kind of a “contains live and active cultures” or similar claim undergo heat treatment after culturing and would be subject to Claims Requirement B. Therefore, we conservatively estimate that all undergo heat treatment after culturing and estimate the relabeling costs associated with adding the phrase “does not contain live and active cultures” to their labels.

We estimate analytical testing costs using information on formula and UPC counts from 2014 Nielsen Scantrack data, as well as information gathered on published prices from various testing laboratories. This information was gathered by RTI International as part of its development of the FDA Labeling Cost Model. We estimate that the total number of yogurt formulas is approximately 6,070 and the total number of yogurt UPCs is approximately 8,002, yielding a formula-to-UPC ratio of 0.759 ($6,070/8,002 = 0.759$). The total number of UPCs that will require analytical testing is approximately 1,539 and the total number of formulas subject to analytical testing is approximately 1,167.

Analytical tests designed to detect pathogens in food cost between \$25.72 and \$60.81 in 2019 dollars per formula. These costs represent an estimate of the costs of measuring the amount of CFU/g in yogurt. We estimate that two samples per formula are tested and that labor costs to prepare samples are approximately \$29.58 and shipping costs related to shipping the samples to the testing laboratory are approximately \$70.81 in 2019 dollars. Therefore, we estimate analytical testing costs to be between approximately \$177,206 and \$259,105 per year.

The number of small yogurt UPCs that will reformulate related to Claims Requirement A is approximately 434 and the total number of formulas subject to reformulation is approximately 329. We estimated reformulation costs by

multiplying the number of formulas by estimates of per-formula costs. We obtain per-formula cost estimates from the FDA Reformulation Cost Model (Ref. 22), which allows the incorporation of a variety of potential reformulation costs associated with idea generation, product research and process development, coordinating activities, product testing, packaging development, market testing, and production/manufacturing. We estimate that the addition of live and active cultures to yogurt batches represents a critical minor ingredient with functional effects, yielding per-formula reformulation costs ranging from approximately \$28,530 to \$289,845 in 2019 USD. We estimate that some manufacturers will be able to coordinate a required reformulation with a scheduled reformulation, resulting in lower reformulation costs than if they were unable to coordinate. However, the extent to which manufacturers can undertake such coordination depends on the compliance period. For a 24-month compliance period, we estimate that 20 percent of reformulations can be coordinated with a scheduled

reformulation. Combining this information, we estimate one-time reformulation costs related to the Claims Requirement to be between approximately \$7.5 million and \$76.3 million in 2019 dollars. Annualized over 10 years and discounted at 3 percent, reformulation costs range from approximately \$855.1 thousand to \$8.7 million per year in 2019 dollars. Annualized over 10 years at 7 percent, reformulation costs range from approximately \$1.0 million to \$10.2 million per year.

We previously estimated that 434 small yogurt UPCs will undergo relabeling related to removing their “contains live and active cultures” or similar claims and 348 small yogurt UPCs will relabel related to the addition of the phrase “does not contain live and active cultures” to their label, for a total of 782 small yogurt UPCs affected by relabeling under the Claims Requirement. We estimate the one-time cost of changing all yogurt labels using the FDA Labeling Cost Model. The removal and addition of claims is a major label change. Using the Labeling

Cost Model and using a 24-month compliance period, the estimated one-time labeling cost lies between approximately \$4.9 million and \$12.4 million in 2019 dollars. Annualized over 10 years at 3 percent, relabeling costs range from approximately \$558.3 thousand to \$1.5 million per year. Annualized over 10 years at 7 percent, relabeling costs range from approximately \$633.7 thousand to \$1.7 million per year.

In total, for a 24-month compliance period, we estimate that the Claims Requirement would cost small yogurt manufacturers between approximately \$1.6 million and \$10.4 million per year in 2019 dollars, or between \$0.2 million and \$1.2 million per small yogurt manufacturer per year, discounted at 3 percent. We estimate that costs are between approximately \$1.8 million and \$12.1 million per year in 2019 dollars, discounted at 7 percent. Costs per small yogurt manufacturer are between approximately \$0.2 million and \$1.3 million per year. These estimates are summarized in table 1.

TABLE 1—ANNUAL COSTS TO SMALL FIRMS OF THE CLAIMS REQUIREMENT
[Millions 2017\$]

	Discount rate (%)	Low (\$)	High (\$)
Annual Analytical Testing Costs .....	.....	\$0.2	\$0.3
Annual Reformulation Costs	3	0.9	8.7
	7	1.0	10.2
Annual Labeling Costs	3	0.6	1.5
	7	0.6	1.7
Annual Costs	3	1.6	10.4
	7	1.8	12.1
Annual Costs Per Small Firm	3	0.2	1.2
	7	0.2	1.3

Notes: 24-month compliance period. One-time reformulation and labeling costs are annualized over 10 years.

3. The Standards of Identity Revocation for Lowfat Yogurt and Nonfat Yogurt

We are revoking the standards of identity for lowfat yogurt (§ 131.203) and nonfat yogurt (§ 131.206). The revocation will result in lowfat yogurt and nonfat yogurt being covered under the general definition and standard of identity in § 130.10. Section 130.10 sets out requirements for foods that substitute for a standardized food but that deviate from the standard due to compliance with an expressed nutrient content claim defined by FDA regulation.

Under § 131.203 and § 131.206, lowfat yogurt must contain not less than 0.5 percent milkfat nor more than 2 percent milkfat, and nonfat yogurt must contain less than 0.5 percent milkfat. If the fat content of yogurt is modified to meet

the expressed nutrient content claims, “low fat” and “no fat” in § 101.62(b), lowfat yogurt must contain less than or equal to 3 grams of fat per RACC, and nonfat yogurt must contain less than 0.5 grams per RACC. The RACC for yogurt is 170 grams. In other words, when yogurt is modified to comply with the expressed nutrient content claims “low fat” and “no fat,” the resultant products are standardized foods under § 130.10, and as such, “lowfat yogurt” must contain less than or equal to 1.76 percent (= 3g/170g) milkfat and “nonfat yogurt” must contain less than 0.29 percent (= 0.5g/170g) milkfat. As acknowledged by comments we received, once this final rule is in effect, some lowfat yogurt and nonfat yogurt products that currently meet the milkfat content requirements in §§ 131.203 and

131.206 will have to be reformulated to meet the fat content requirements for “low fat” and “no fat” under § 101.62(b). For example, a lowfat yogurt product with 2 percent milkfat will need to be reformulated to contain no more than 1.33 percent milkfat to comply with § 101.62(b) and be covered as a standardized food under § 130.10.

To estimate the percentage of lowfat yogurt and nonfat yogurt products affected by the Standards of Identity Revocation, we use data from the USDA’s National Nutrient Database for Standard Reference (Ref. 2). We estimate that approximately 21 percent of lowfat yogurts and 19 percent of nonfat yogurts are affected by the Standards of Identity Revocation and will need to reformulate to reduce the fat content of their yogurts to meet the 1.76 percent and 0.29

percent thresholds. We estimate that there are approximately nine small yogurt manufacturers. Using data from the International Dairy Foods Association, we estimate that 52 percent of yogurt sales are of lowfat yogurt and 43 percent are of nonfat yogurt. We estimate that the number of small lowfat yogurt manufacturers affected by the Standards of Identity Revocation is approximately one and the number of small nonfat yogurt manufacturers affected by the Standards of Identity Revocation is approximately one. We estimate that there are 8,002 yogurt UPCs and that small yogurt manufacturers comprise roughly 29 percent of all yogurt manufacturers. We estimate that the number of small lowfat yogurt and nonfat yogurt manufacturer UPCs affected by the Standards of Identity Revocation are approximately 350 and approximately 200, respectively, for a total of 550 UPCs.

We estimate reformulation costs using the FDA Reformulation Cost Model (Ref. 22). Using the yogurt formula-to-UPC ratio of 0.759, we estimate that the total number of small yogurt manufacturer formulas subject to reformulation is approximately 417. We estimate reformulation costs by multiplying the

estimated number of formulas by estimates of per-formula costs obtained from the FDA Reformulation Cost Model. We estimate that yogurt manufacturers that need to reduce the fat content of their yogurt will substitute lower fat milk for higher fat milk in the production process and that this is a critical minor ingredient with functional effects, yielding per-formula reformulation costs ranging from approximately \$28,530 to \$289,845 in 2019 dollars. For a 24-month compliance period, we estimate one-time reformulation costs related to the Standards of Identity Revocation to be between approximately \$11.9 million and \$120.9 million in 2019 dollars. Annualized over 10 years at 3 percent, reformulation costs range from approximately \$1.4 million to \$13.8 million per year. Annualized over 10 years at 7 percent, reformulation costs range from approximately \$1.6 million to \$16.1 million per year.

Because small yogurt manufacturers must change the fat content of their lowfat yogurt and nonfat yogurt, they also must change the amount of fat declared on the Nutrition Facts Label. Using the FDA Labeling Cost Model, we estimate the one-time cost of this minor

label change to be between approximately \$1.4 million and \$4.1 million in 2019 dollars for small yogurt manufacturers. Annualized over 10 years, labeling costs for small yogurt manufacturers are estimated to be between approximately \$161.3 thousand and \$471.4 thousand per year, discounted at 3 percent. Labeling costs for small yogurt manufacturers are estimated to be between approximately \$188.6 thousand and \$551.1 thousand per year, discounted at 7 percent.

In total, for a 24-month compliance period, we estimate that revoking the standards of identity for lowfat yogurt and nonfat yogurt would cost small yogurt manufacturers between approximately \$1.4 million and \$13.8 million per year in 2019 dollars, or between approximately \$1.6 million and \$16.1 million per small yogurt manufacturer per year, discounted at 3 percent. Discounted at 7 percent, we estimate that costs are between approximately \$1.8 million and \$16.6 million per year. Per small yogurt manufacturer range between approximately \$1.5 million and \$16.9 million per year. These estimates are summarized in table 2.

TABLE 2—ANNUAL COSTS TO SMALL FIRMS OF STANDARDS OF IDENTITY REVOCATION
[Millions 2019\$]

	Discount rate (%)	Low (\$)	High (\$)
Annual Reformulation Costs	3	\$1.4	\$13.8
	7	1.6	16.1
Annual Labeling Costs	3	0.2	0.5
	7	0.2	0.6
Annual Costs	3	1.5	14.2
	7	1.8	16.6
Annual Costs Per Small Firm	3	1.5	14.5
	7	1.8	16.9

Notes: 24-month compliance period. One-time reformulation and labeling costs are annualized over 10 years.

4. Summary of Costs

The total cost of the final rule to small yogurt manufacturers for a 24-month compliance period is approximately \$3.7 million to \$25.1 million per year in 2019 dollars, discounted at 3 percent.

Discounted at 7 percent, estimated annual total costs are between approximately \$4.2 million and \$29.2 million. On a per firm per year basis, estimated costs are between approximately \$0.4 million and \$2.8 million per small yogurt manufacturer

per year in 2019 dollars, discounted at 3 percent. Discounted at 7 percent, estimated annual total costs are between approximately \$0.5 million and \$3.2 million per small yogurt manufacturer. These estimates are summarized in table 3.

TABLE 3—ANNUAL COSTS TO SMALL FIRMS OF FINAL YOGURT RULE
[Millions 2019\$]

	Discount rate (%)	Low (\$)	High (\$)
Annual Cost of Claims Requirements	3	\$1.6	\$10.4
	7	1.8	12.1
Annual Cost of Standards of Identity Revocation	3	1.5	14.2
	7	1.8	16.6
Annual Cost of Final Yogurt Rule	3	3.1	24.6
	7	3.6	28.8

TABLE 3—ANNUAL COSTS TO SMALL FIRMS OF FINAL YOGURT RULE—Continued
[Millions 2019\$]

	Discount rate (%)	Low (\$)	High (\$)
Annual Cost of Final Yogurt Rule Per Small Firm	3 7	0.3 0.4	2.7 3.2

Notes: 24-month compliance period.

5. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. We do not expect this rule to result in any 1-year expenditure that will meet or exceed this amount.

We estimate that the annual costs of the final rule to small yogurt manufacturers will be between approximately \$3.1 million to \$24.6 million, discounted at 3 percent in 2019 dollars. At a 7 percent discount rate, we estimate that the annual costs of the final rule will be between \$3.6 and \$28.8 million. Based on our analysis, we do not expect the final rule to reach the current UMRA threshold of \$158 million. We also do not expect the estimated costs of the rule to be disproportionately incurred by any State, local, or tribal government.

The full analysis of economic impacts is available in the docket for this final rule and at <https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations>.

VI. Federalism

We have analyzed the final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive Order requires agencies to “construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.”

Section 403A of the FD&C Act (21 U.S.C. 343–1) is an express preemption

provision. Section 403A(a) of the FD&C Act provides that: “* * * no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g). * * *”

The final rule makes changes to the standards of identity for yogurt, lowfat yogurt, and nonfat yogurt. The final rule has preemptive effect under section 403A(a)(1) of the FD&C Act in that it precludes States from issuing any requirements for yogurt that are not identical to the requirements of the final rule. Section 403A(a)(1) of the FD&C Act displaces both State legislative requirements and State common law duties (*Riegel v. Medtronic*, 128 S. Ct. 999 (2008)). In addition, as with any Federal requirement, if a State law requirement makes compliance with both Federal law and State law impossible, or would frustrate Federal objectives, the State requirement would be preempted. See *Geier v. American Honda Co.*, 529 U.S. 861 (2000); *English v. General Electric Co.*, 496 U.S. 72, 79 (1990); *Florida Lime & Avocado Growers, Inc.*, 373 U.S. 132, 142–43 (1963); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

The final rule contains no collection of information. Therefore, clearance by Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

X. Objections

This rule is effective as shown in the **DATES** section, except as to any provisions that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <https://www.regulations.gov>. We will

publish notice of the objections that we have received or lack thereof in the **Federal Register**.

XI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have copyright restriction, or they are available as published articles and books. Please contact either person identified in the **FOR FURTHER INFORMATION CONTACT** section to schedule a date to inspect references without asterisks. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA Office for Policy & Planning to the Division of Dockets Management Memorandum, "Extension of Comment Period on Docket No. FDA-2000-P-0126 (Formerly Docket No. 2000P-0685) (Milk and Cream Products and Yogurt Products; Proposal to Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and to Amend the Standard for Yogurt)," March 31, 2009. Document ID: FDA-2000-P-0126-0070.
2. *United States Department of Agriculture, Agricultural Research Service, FoodData Central, 2020, available at: <https://fdc.nal.usda.gov/>.
3. Routray, W. and H.N. Mishra, "Scientific and Technical Aspects of Yogurt Aroma and Taste: A Review," *Comprehensive Reviews in Food Science and Food Safety*, 10(4): 208–220, 2011.
4. Cheng, H., "Volatile Flavor Compounds in Yogurt: A Review," *Critical Reviews in Food Science and Nutrition*, 50:938–950, 2010.
5. *Codex Alimentarius Commission, "Codex Standard for Fermented Milks (CODEX STAN 243–2003)," In *Milk and Milk Products*, Second edition, (2011), available at: <http://www.fao.org/3/i2085e/i2085e00.pdf>.
6. *FDA Memorandum, "Live and Active Culture Survey Submitted by the National Yogurt Association Consumer Studies Comment on Survey Report," 2009b.
7. Dave, R.I. and N.P. Shah, "Viability of Yoghurt and Probiotic Bacteria in Yoghurts Made From Commercial Starter Cultures," *International Dairy Journal*, 7:31–41, 1997.
8. Ibrahim, S.A. and J.P. Carr, "Viability of Bifidobacteria in Commercial Yogurt Products in North Carolina During Refrigerated Storage," *International Journal of Dairy Technology*, 59:272–277, 2006.
9. Rosburg, V., T. Boylston, and P. White, "Viability of Bifidobacteria Strains in Yogurt With Added Oat Beta-Glucan and Corn Starch During Cold Storage," *Journal of Food Science*, 75:C439–C444, 2010.
10. *United States Government Accountability Office (GAO), "GAO-01-326, Dairy Products: Imports, Domestic Production, and Regulation of Ultra-Filtered Milk," 2001.
11. *FDA, GRAS Notice No. GRN 000504 to American Dairy Products Institute and U.S. Dairy Export Council, November 21, 2014.
12. Boer, Ruud de. (2014). Chapter 6: Vital Membrane Processes. *From Milk By-Products to Milk Ingredients—Upgrading the Cycle*. John Wiley & Sons.
13. *FDA, "Bacteriological Analytical Manual (BAM), Chapter 3. Aerobic Plate Count," 2001; available at: <https://www.fda.gov/food/laboratory-methods-food/bam-chapter-3-aerobic-plate-count>.
14. International Organization for Standardization (ISO) and International Dairy Federation (IDF), "International Standard. ISO 7889/IDF 117:2003. Yogurt—Enumeration of Characteristic Microorganisms—Colony-Count Technique at 37 °C," 2003.
15. Duncan, S.E., B.R. Yaun, and S.S. Sumner, "Microbiological Methods for Dairy Products, Method 9.080. Yogurt and Other Fermented Milk Products," In: *Standard Methods for the Examination of Dairy Products*, edited by H.M. Wehr and J.F. Frank, 17th Ed., Washington, DC, Chapter 9, pp. 261–263, American Public Health Association, 2004.
16. Lerebours, E., C. N'Djitoyap Ndam, A. Lavoine, et al., "Yogurt and Fermented-Then-Pasteurized Milk: Effects of Short-Term and Long-Term Ingestion on Lactose Absorption and Mucosal Lactase Activity in Lactase-Deficient Subjects," *American Journal of Clinical Nutrition*, 49:823–827, 1989.
17. Marteau, P., B. Flourie, P. Pochart, C. et al., "Effect of the Microbial Lactase (EC 3.2.1.23) Activity in Yoghurt on the Intestinal Absorption of Lactose: An in Vivo Study in Lactase-Deficient Humans," *British Journal of Nutrition*, 64:71–79, 1990.
18. Ouwehand, A.C. and S.J. Salminen, "The Health Effects of Cultured Milk Products With Viable and Non-Viable Bacteria," *International Dairy Journal*, 8:749–758, 1998.
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21. *FDA Memorandum, Juan, WenYen, "Documentation for the Analysis of Lowfat and Nonfat Yogurts Consumption and Contribution of Vitamin A Over Time in the U.S. Population," 2021.
22. White, W.J., Gledhill, E., Karns, S., et al. (2002). *Cost of Reformulating Foods and Cosmetics* (FDA Labeling Cost Model). Research Triangle Park: RTI.

List of Subjects

21 CFR Part 130

Food additives, Food grades and standards.

21 CFR Part 131

Cream, Food grades and standards, Incorporation by reference, Milk, Yogurt.

Therefore, 21 CFR parts 130 and 131 are amended as follows:

PART 130—FOOD STANDARDS: GENERAL

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

■ 2. In § 130.10, revise paragraph (b) to read as follows:

§ 130.10 Requirements for foods named by use of a nutrient content claim and a standardized term.

* * * * *

(b) *Nutrient addition.* (1) Nutrients shall be added to the food to restore nutrient levels so that the product is not nutritionally inferior, as defined in § 101.3(e)(4) of this chapter, to the standardized food as defined in parts 131 through 169 of this chapter. The addition of nutrients shall be reflected in the ingredient statement.

(2) Yogurt containing less than 3.25 percent milkfat is exempt from compliance with paragraph (b)(1) of this section with respect to vitamin A fortification provided the product complies with all other requirements.

* * * * *

PART 131—MILK AND CREAM

■ 3. The authority citation for part 131 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 4. Revise § 131.200 to read as follows:

§ 131.200 Yogurt.

(a) *Description.* Yogurt is the food produced by culturing one or more of the basic dairy ingredients specified in paragraph (b) of this section and any of the optional dairy ingredients specified in paragraph (c) of this section with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus delbrueckii*

subsp. *bulgaricus* and *Streptococcus thermophilus*. The ingredients specified in paragraphs (b) and (c) of this section may be homogenized and must be pasteurized or ultra-pasteurized before the addition of the characterizing bacterial culture. One or more of the other optional ingredients specified in paragraph (d) of this section may also be added. Yogurt, before the addition of bulky flavoring ingredients, contains not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat and has either a titratable acidity of not less than 0.7 percent, expressed as lactic acid, or a pH of 4.6 or lower. To extend the shelf life of the food, yogurt may be treated after culturing to inactivate viable microorganisms.

(b) *Basic dairy ingredients*. Cream, milk, partially skimmed milk, skim milk, or the reconstituted versions of these ingredients may be used alone or in combination.

(c) *Optional dairy ingredients*. Other safe and suitable milk-derived ingredients may be used to increase the milk solids not fat content of the food above the minimum of 8.25 percent required in paragraph (a) of this section, provided that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present must not be decreased as a result of adding such ingredients.

(d) *Other optional ingredients*. The following safe and suitable ingredients may be used:

- (1) Cultures, in addition to the characterizing bacterial culture specified in paragraph (a) of this section.
- (2) Nutritive carbohydrate sweeteners.
- (3) Flavoring ingredients.
- (4) Color additives.
- (5) Stabilizers.
- (6) Emulsifiers.
- (7) Preservatives.
- (8) Vitamin addition (optional).

(i) If added, vitamin A must be present in such quantity that the food contains not less than 10 percent Daily Value per Reference Amount Commonly Consumed (RACC) thereof, within limits of current good manufacturing practice.

(ii) If added, vitamin D must be present in such quantity that the food contains not less than 25 percent Daily Value per Reference Amount Commonly Consumed (RACC) thereof, within limits of current good manufacturing practices.

(e) *Methods of analysis*—(1) *Milk*—(i) *Milkfat content*. As determined by the method prescribed in section 33.2.26, AOAC Official Method 989.05, Fat in Milk Modified Mojonnier Ether Extraction Method.

(ii) *Milk solids not fat*. Calculated by subtracting the milkfat content from the

total solids content using the method prescribed in section 33.2.45, AOAC Official Method 990.21, Solids-Not-Fat in Milk by Difference between Total Solids and Fat Contents.

(iii) *Titratable acidity*. As determined by the method prescribed in section 33.2.06, AOAC Official Method 947.05, Acidity of Milk Titrimetric Method.

(2) *pH*. As determined by the potentiometric method described in § 114.90(a) of this chapter.

(3) *Live and active cultures*. As determined by the method described in ISO 7889:2003(E)/IDF 117:2003(E), Yogurt—Enumeration of Characteristic Microorganisms—Colony-Count Technique at 37 °C.

(f) *Nomenclature*. The name of the food is “yogurt.” The name of the food must be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in § 101.22 of this chapter.

(1) The following term(s) must accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(i) The word “sweetened” if a nutritive carbohydrate sweetener is added without the addition of characterizing flavor.

(ii) The phrase “does not contain live and active cultures” if the dairy ingredients have been treated after culturing to inactivate viable microorganisms.

(iii) The phrase “vitamin A” or “vitamin A added”, or “vitamin D” or “vitamin D added”, or “vitamins A and D added”, as appropriate. The word “vitamin” may be abbreviated “vit”.

(2) The name of the food may be accompanied by the phrase “contains live and active cultures” or another appropriate descriptor if the food contains a minimum level of live and active cultures of 10⁷ colony forming units per gram (CFU/g) at the time of manufacture with a reasonable expectation of 10⁶ CFU/g through the manufacturer’s assigned shelf life of the product.

(3) The term “homogenized” may appear on the label if the dairy ingredients used are homogenized.

(g) *Label declaration*. Each of the ingredients used in the food must be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

(h) *Incorporation by reference*. The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce

any edition other than that specified in this section, FDA must publish a document in the **Federal Register**, and the material must be available to the public. All approved material is available for inspection at the Food and Drug Administration’s Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and is available from the sources indicated in this paragraph (h). It is also available for inspection 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 www.archives.gov/federal-register/cfr/ibr-locations.html.

(1) AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250:

(i) AOAC Official Method 947.05, Acidity of Milk Titrimetric Method, Section 33.2.06, Official Methods of Analysis, 21st edition, 2019, Vol. 1.

(ii) AOAC Official Method 989.05, Fat in Milk Modified Mojonnier Ether Extraction Method, Section 33.2.26, Official Methods of Analysis, 21st edition, 2019, Vol. 1.

(iii) AOAC Official Method 990.21, Solids-Not-Fat in Milk by Difference between Total Solids and Fat Contents, Section 33.2.45, Official Methods of Analysis, 21st edition, 2019, Vol. 1.

(2) ISO, ISO Central Secretariat, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland.

(i) ISO 7889:2003(E), Yogurt—Enumeration of Characteristic Microorganisms—Colony-Count Technique at 37 °C, First edition, 2003–02–01.

(ii) [RESERVED]

Note 1 to paragraph (h)(2)(i): ISO 7889:2003(E) is co-published as IDF 117:2003(E).

§ 131.203 [Removed]

■ 5. Remove § 131.203.

§ 131.206 [Removed]

■ 6. Remove § 131.206.

Dated: June 2, 2021.

Janet Woodcock,

Acting Commissioner of Food and Drugs.

Dated: June 7, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–12220 Filed 6–9–21; 8:45 am]

BILLING CODE 4164–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT**22 CFR Part 213**

RIN 0412-AA96

Claims—Collection Regulation**AGENCY:** U.S. Agency for International Development.**ACTION:** Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is revising its regulation on claims collection in its entirety to incorporate applicable statutory and regulatory provisions and to make other changes. Specifically, an amendment made by the Digital Accountability and Transparency Act of 2014 (DATA Act) requires USAID to refer to the Secretary of the Treasury all past-due, legally enforceable, non-tax debt that are over 120 days delinquent. The changes will maximize the effectiveness of USAID's claim-collection procedures.

DATES: Effective July 12, 2021.**FOR FURTHER INFORMATION CONTACT:**

Dorothea Malloy, Senior Advisor to the Chief Financial Officer, 202-916-2518, dmalloy@usaid.gov for clarification of content or information pertaining to status or publication schedules. All communications regarding this rule must cite RIN No. 0412-AA96

SUPPLEMENTARY INFORMATION: USAID sought public comment on a proposed rule published on March 1, 2021, to revise its regulations under 22 CFR part 213, USAID's claim-collection regulation. The final rule's purpose is to conform to a statutory requirement that Federal Departments and Agencies must refer all past-due, legally enforceable, non-tax debt that is delinquent for more than 120 days, including non-tax debt administered by a third party that is acting as an agent for the Federal Government, to the Secretary of the Treasury for the purposes of administrative offset. The final rule also updates claims-collection definitions to align with the Debt Collection Improvement Act of 1996 and specifies that the Bureau of the Fiscal Service is the Agency within the U.S. Department of the Treasury to which USAID refers delinquent debts.

A. Background

USAID published a proposed rule in the **Federal Register** at 86 FR 11905 (March 1, 2021) to revise its regulation on claims collection in its entirety to incorporate applicable statutory and regulatory provisions and to make other changes. The public comment period for

this proposed rule ended on March 31, 2021.

B. Discussion and Analysis

There were no relevant public comments submitted in response to the proposed rule and no changes were made to the final rule.

C. Regulatory Findings

Executive Orders 12866, 13563, and 13771

USAID has drafted this rule in accordance with Executive Orders (E.O.s) 12866 and 13563, which direct Federal Departments and Agencies to assess all 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 equality). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. USAID has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in E.O.s 12866 and 13563 and finds that the benefits of issuing this rule outweigh any costs, which the Agency assesses to be minimal. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB/OIRA) has determined that this rule is not a "significant regulatory action" as defined in E.O. 12866 and, accordingly, has not reviewed it. OMB/OIRA also has determined that this rule is not an "economically significant regulatory action" under Section 3(f)(1) of E.O. 12866. This final rule is not subject to the requirements of E.O. 13771 because OMB has determined it to be non-significant within the meaning of E.O. 12866.

Regulatory Flexibility Act

USAID certifies that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Agency has not prepared a regulatory-flexibility analysis.

Small Business Regulatory Enforcement Fairness Act

This rule is not a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (Section 804(2) of Title 5 of the United States Code [U.S.C.]). This rule will not result in an annual effect on the U.S. economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and import markets.

Unfunded Mandates Reform Act

This final 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 year, and it will not significantly or uniquely affect small governments. Therefore, USAID has deemed no actions were necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*).

Executive Order 13132

This rule 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. In accordance with E.O. 13132, USAID has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Summary Impact Statement.

Executive Order 12988

In accordance with E.O. 12988, the Office of the General Counsel at USAID has determined that this rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive order.

Executive Order 13175

USAID has determined that this rule would not have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes (E.O. 13175).

Paperwork Reduction Act

This rule does not contain information-collection requirements, and therefore a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required.

List of Subjects in 22 CFR Part 213

Claims, Government employees, Income taxes, Wages.

Accordingly, the Agency for International Development amends 22 CFR part 213 as follows:

PART 213—CLAIMS COLLECTION

- 1. The authority citation for part 213 is revised to read as follows:

Authority: 22 U.S.C. 2381(a); 31 U.S.C. 902(a); 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 31 CFR part 285; 31 CFR parts 900 through 904.

Subpart A—General Provisions

- 2. Revise the heading for subpart A to read as set for above.
- 3. Revise § 213.1 to read as follows:

§ 213.1 Purpose and scope.

(a) *Purpose.* This part prescribes standards and procedures for the collection and disposal of claims due to the United States from the U.S. Agency for International Development (USAID). This part covers USAID's administrative actions to collect claims/debts (including administrative and salary offsets; compromise; suspension or termination of collection actions; transfer and/or referral of claims to the U.S. Departments of the Treasury and Justice). The terms "claim" and "debt" are synonymous and interchangeable. They refer to an amount of money, funds, or property that an appropriate USAID official has determined to be due to the United States from any person, organization, or entity except another Federal Department or Agency.

(b) *Scope.* The standards and procedures in this part are applicable to all claims and debts for which a statute, regulation, or contract does not prescribe different standards or procedures.

(c) *Applicability.* This part does not apply to USAID:

(1) Claims arising out of loans for which compromise and collection authority is conferred by section 635(g)(2) of the Foreign Assistance Act of 1961, as amended;

(2) Claims arising from investment guaranty operations for which settlement and arbitration authority is conferred by section 635(l) of the Foreign Assistance Act of 1961, as amended;

(3) Claims against any foreign country or any political subdivision thereof, or any public international organization;

(4) Claims where the Chief Financial Officer (CFO) determines that the achievement of the purposes of the Foreign Assistance Act of 1961, as amended, or any other provision of law administered by USAID require a different course of action;

(5) Claims owed USAID by other Federal Departments and Agencies. Such debts will be resolved by negotiation between the Departments/Agencies; and

(6) Claims that appear to be fraudulent, false, or misrepresented by a party with an interest in the claim except to the extent provided in § 213.4.

- 4. Amend § 213.2 by revising paragraphs (d) through (o) and adding paragraphs (p) through (s) to read as follows:

§ 213.2 Definitions.

* * * * *

(d) *Claim (or Debt)* means an amount of money, funds, or property that a USAID official has determined to be due the United States from any person, organization, or entity, except another Federal Department or Agency. As used in this part, the terms "debt" and "claim" are synonymous and interchangeable.

(e) *CFO* means the Chief Financial Officer of USAID or a USAID official delegated by the CFO to act on the CFO's behalf.

(f) *Compromise* means that the creditor Agency accepts less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

(g) *Creditor Agency* means the Federal Department or Agency to which the debt is owed, including a debt-collection center when acting on behalf of a creditor Agency in matters pertaining to the collection of a debt.

(h) *Debtor* means an individual, organization, association, corporation, or a State or local government indebted to the United States, or a person or entity with legal responsibility for assuming the debtor's obligation.

(i) *Delinquent debt* means any debt that is past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the Agency's initial written demand for payment notice or applicable agreement or instrument (including a postdelinquency payment agreement) unless the parties involved have made other satisfactory payment arrangements.

(j) *Discharge of indebtedness* means the release of a debtor from personal liability for a debt. Further collection action is prohibited.

(k) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay, which remains after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders) in accordance with 5 CFR parts 581 and 582. Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal

Revenue Code (title 26 of the United States Code) and deductions described in 5 CFR 581.105(b) through (f). These deductions include, but are not limited to, Social Security withholdings; Federal, State, and local tax withholdings; health-insurance premiums; retirement contributions; and life-insurance premiums.

(l) *Employee* means a current U.S. Direct-Hire employee of the Federal Government, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(m) *Employee salary offset* means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(n) *Person* means an individual, firm, partnership, corporation, association, and, except for purposes of administrative offsets under subpart C of this part and interest, penalties, and administrative costs under subpart B of this part, includes State and local governments and Indian tribes and components of tribal governments.

(o) *Recoupment* is a special method for adjusting debts that arise under the same transaction or occurrence. For example, obligations that arise under the same contract generally are subject to recoupment.

(p) *Suspension* means the temporary cessation of active debt collection pending the occurrence of an anticipated event.

(q) *Termination* means the cessation of all active debt-collection action for the foreseeable future.

(r) *Waiver* means the decision to forgo the collection of a debt owed to the United States, as provided for by a specific statute and according to the standards set out under that statute.

(s) *Withholding order* means any order for the withholding or garnishment of pay issued by USAID or a judicial or administrative body. For the purposes of this part, "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 213.3 [Removed]

- 5. Remove § 213.3.

§ 213.4 [Redesignated as § 213.3]

- 6. Redesignate § 213.4 as § 213.3.
- 7. Amend newly redesignated § 213.3 by revising paragraph (a) to read as follows:

§ 213.3 Other remedies.

(a) This part does not supersede or require the omission or duplication of administrative proceedings required by

contract, statute, or regulation (*e.g.*, resolution of audit findings under grants or contracts; or appeal provisions under grants or contracts).

* * * * *

§ 213.5 [Redesignated as § 213.4]

■ 8. Redesignate § 213.5 as § 213.4 and revise it to read as follows:

§ 213.4 Fraud claims.

(a) The CFO will refer a claim that appears to be fraudulent, false, or misrepresented by a party that has an interest in the claim to the USAID Office of Inspector General (OIG). The OIG has the responsibility for investigating or referring the matter, where appropriate, to the U.S. Department of Justice (DOJ). The OIG has the responsibility to provide the results of the investigation on a timely basis to the CFO for any further action.

(b) The CFO will not administratively compromise, terminate, or suspend collection action, or otherwise dispose of a claim that appears to be fraudulent, false, or misrepresented by a party that has an interest in the claim, without the approval of DOJ.

§ 213.6 [Redesignated as § 213.5]

■ 9. Redesignate § 213.6 as § 213.5 and revise it to read as follows:

§ 213.5 Subdivision of claims not authorized.

USAID will not subdivide a claim to avoid the \$100,000 limit on the Agency's authority to compromise a claim, suspend collection action on a claim, or terminate collection action on a claim. A debtor's liability that arises from a particular transaction or contract is a single claim.

§ 213.7 [Redesignated as § 213.6]

■ 10. Redesignate § 213.7 as § 213.6.

Subpart B—Collection Actions

■ 11. Revise the heading for subpart B to read as set forth above.

§ 213.8 [Redesignated as § 213.7 and Transferred to Subpart B]

■ 12. Redesignate § 213.8 as § 213.7 and transfer it to subpart B.

■ 13. Amend newly redesignated § 213.7 by revising paragraph (a) to read as follows:

§ 213.7 Collection—general.

(a) The CFO takes action to collect all debts owed the United States that arise out of USAID's activities, and to reduce debt delinquencies. Collection actions may include sending at least one written demand for payment notice to the

debtor's last-known address provided in the records of USAID. Other appropriate action may proceed the written demand for payment notice, including immediate referral to DOJ for litigation, when such action is necessary to protect the Federal Government's interest.

* * * * *

§ 213.9 [Redesignated as § 213.8]

■ 14. Redesignate § 213.9 as § 213.8.

■ 15. Amend newly redesignated § 213.8 by:

■ a. Revising the section heading and paragraphs (a) introductory text and (a)(4), (5), (7), (8), (10), and (11);

■ b. Adding paragraph (a)(12); and

■ c. Revising paragraph (b).

The revisions and addition read as follows:

§ 213.8 Written demand for payment notice.

(a) When an Agency official determines that a debt is owed to USAID, the Agency sends a written demand for payment notice to the debtor. Unless otherwise provided by agreement, contract, or order, the written demand for payment notice informs the debtor of:

* * * * *

(4) Any rights available to the debtor to review the debt, or to have recovery of the debt waived (by citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(5) The date on which debt payment is due, which will be not more than 30 days from the date the written demand for-payment notice is mailed or hand delivered;

* * * * *

(7) The debt is considered delinquent if it is not paid on the due date provided in the initial written demand-of payment notice;

(8) The imposition of interest charges, penalties, and administrative costs that USAID may assess against a delinquent debt, and the date when such charges apply;

* * * * *

(10) The Agency will refer delinquent debt unpaid at 90 days from the initial written demand for payment notice to the Bureau of the Fiscal Service (Fiscal Service) within the U.S. Department of the Treasury. Statute requires the referral of delinquent debt to Fiscal Service no later than 120 days from the initial written demand-for-payment notice. Fiscal Service will use means available to the Federal Government for collecting a debt, including administrative wage-garnishment, the

use of collection agencies, and reporting the indebtedness to a credit-reporting bureau (see § 213.15);

(11) The address, telephone number, and name of the person available to discuss the debt; and

(12) The possibility of referral to DOJ for litigation if USAID cannot collect the debt administratively.

(b) USAID will respond promptly to written communications from the debtor, generally within 30 days of receipt of such a communication.

§ 213.10 [Redesignated as § 213.9]

■ 16. Redesignate § 213.10 as § 213.9.

■ 17. Amend newly redesignated § 213.9 by revising the section heading and paragraphs (a) and (c) and adding paragraph (e) to read as follows:

§ 213.9 Agency review requirements.

(a) For purposes of this section, whenever USAID must afford a debtor a review within the Agency, USAID shall provide the debtor with a reasonable opportunity for a review when the debtor requests reconsideration of the debt in question. The review may include the examination of documents, internal discussions with relevant officials, and discussion by letter or orally with the debtor, at USAID's discretion. For the offset of current Federal salary under 5 U.S.C. 5514 for certain debts, an employee may request an outside hearing. See §§ 213.21 and 213.22 when USAID is the creditor Agency.

* * * * *

(c) This section does not require an oral hearing with respect to debt collection in which the agency has determined that review of the written record is an adequate means to correct a prior mistake.

* * * * *

(e) If, after review, USAID either sustains or amends its determination, it shall notify the debtor of its intent to collect the sustained or amended debt. The notification to collect the sustained or amended debt will include accrued interest on the sustained or amended debt, calculated from the date of delinquency. If USAID has suspended collection actions previously, it will reinstitute them unless it receives payment of the sustained or amended amount, or the debtor has made a proposal for a payment plan to which the Agency agrees, by the date specified in the notification of USAID's decision.

§ 213.11 [Redesignated as § 213.10]

■ 18. Redesignate § 213.11 as § 213.10.

■ 19. Amend newly redesignated § 213.10 by revising paragraph (b) to read as follows:

§ 213.10 Aggressive collection actions; documentation.

* * * *

(b) USAID documents all administrative collection actions in the claim file, along with the basis for any compromise, termination, or suspension of collection actions. USAID retains this documentation, which may include the Claims-Collection Litigation Report (CCLR) provided in § 213.24, in the appropriate debt file.

§ 213.12 [Redesignated as § 213.11]

■ 20. Redesignate § 213.12 as § 213.11.

■ 21. Amend newly redesignated § 213.11 by revising the section heading and paragraphs (a)(1) and (e) to read as follows:

§ 213.11 Interest, penalties, and administrative costs.

(a) * * *

(1) Interest begins to accrue on all delinquent debts starting from the day after the payment due date established in the initial written demand-for payment notice to the debtor. USAID will assess an annual rate of interest that is equal to the U.S. Department of the Treasury Current Value of Funds Rate (CVFR) unless a different rate is necessary to protect the interest of the Federal Government. USAID will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

* * * *

(e) *Waivers for the collection of interest, penalties, and administrative costs.* (1) The CFO will waive the collection of interest and administrative charges on the portion of the debt paid within 30 days after the date on which interest begins to accrue. The CFO may extend this 30-day period, on a case-by case basis, when he or she determines that such action is in the best interest of the Federal Government. A decision to extend or not to extend the payment period is final, and is not subject to further review.

(2) The CFO may (without regard to the amount of the debt) waive the collection of all or part of accrued interest, penalties, or administrative costs, when he or she determines that—

(i) A waiver is justified under the standards for the compromise of claims under § 213.25; or

(ii) Collection of these charges would be against equity and good conscience, or is not in the best interest of the United States.

(3) The CFO may make a decision to waive interest, penalties, or administrative costs at any time.

§ 213.13 [Redesignated as § 213.12]

■ 22. Redesignate § 213.13 as § 213.12 and revise it to read as follows:

§ 213.12 Interest, penalties, and administrative costs pending consideration of debt waiver or review.

Interest, penalties, and administrative costs will continue to accrue on a debt during a review by USAID and during a waiver of indebtedness consideration by the Agency; except that USAID will not assess interest, penalties, and administrative costs where a statute or a regulation specifically prohibits the collection of the debt during the period of the Agency's review or consideration of a debt waiver.

■ 23. Add new § 213.13 to read as follows:

§ 213.13 Waivers of indebtedness.

The CFO may grant waivers of indebtedness for certain types of debt identified in Federal statutes under the following waiver authorities:

(a) *Waiver authorities*—(1) *Debts that arise out of erroneous payments of pay and allowances, and of travel, transportation, and relocation expenses and allowances.* Title 5 U.S.C. 5584 provides the authority for waiving, in whole or in part, debts that arise out of erroneous payments of pay or allowances, travel, transportation, or relocation expenses and allowances to an employee of USAID, if collection would be against equity and good conscience, or not in the best interests of the United States:

(i) The CFO may not grant a waiver if there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person who has an interest in obtaining a waiver.

(ii) Fault is considered to exist if, in light of the circumstances, the employee knew, or should have known through the exercise of due diligence, that an error existed, but he or she failed to take corrective action. What an employee should have known is evaluated under a reasonable-person standard. However, employees are expected to have a general understanding of the Federal pay system applicable to them.

(iii) An employee with notice that a payment might be erroneous is expected to make provisions for eventual repayment. Financial hardship is not a basis for granting a waiver for an employee who was on notice of an erroneous payment.

(iv) If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person

who has an interest in obtaining a waiver of the claim, the employee is not automatically entitled to a waiver. Before granting a waiver, the deciding official also must determine that collection of the claim against an employee would be against equity and good conscience, or not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience, or not in the best interests of the United States, include, but are not limited to, the following:

(A) Whether collection of the claim would cause serious financial hardship to the employee from whom the Agency seeks collection;

(B) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of his or her financial circumstances;

(C) The time elapsed between the erroneous payment and the discovery of the error and notification of the employee;

(D) Whether failure to make restitution would result in unfair gain to the employee; and

(E) Whether recovery of the claim would be unconscionable under the circumstances.

(2) *Debts that arise out of advances in pay (5 U.S.C. 5524a); situations of Authorized or Ordered Departures (5 U.S.C. 5522); or allowances and differentials for employees stationed abroad (5 U.S.C. 5922).* Title 5 U.S.C. 5524a, 5522, or 5922 provide authority for waiving, in whole or in part, a debt that arises out of such an advance payment if it is shown that recovery would be against equity and good conscience, or against the public interest:

(i) Factors to consider when determining if recovery of an advance payment would be against equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(3) *Debts that arise out of employee training expenses.* Title 5 U.S.C. 4108 provides the authority for waiving, in whole or in part, a debt that arises out of employee training expenses if it is shown that recovery would be against

equity and good conscience, or against the public interest:

(i) Factors to consider when determining if recovery of a debt that arises out of employee training expenses would be against equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(4) *Under-withholding of life insurance premiums.* Title 5 U.S.C. 8707(d) provides the authority for waiving the collection of unpaid deductions that result from the underwithholding of premiums under the Federal Employees' Group Life Insurance Program if the individual is without fault and recovery would be against equity and good conscience, or against the public interest:

(i) Fault is considered to exist if, in light of the circumstances, the employee knew, or should have known through the exercise of due diligence, that an error existed, but he or she failed to take corrective action:

(ii) Factors to consider when determining whether the recovery of unpaid deduction that results from under-withholding would be against equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Whether collection of the claim would cause serious financial hardship to the individual from whom the Agency seeks collection;

(B) The time elapsed between the failure to withhold properly and the discovery of the failure and notification of the individual;

(C) Whether failure to make restitution would result in unfair gain to the individual; and

(D) Whether recovery of the claim would be unconscionable under the circumstances.

(5) *Student-Loan Repayment Program service agreements.* Title 5 U.S.C. 5379 provides for waiving, in whole or in part, debt that arises from the Student Loan Repayment Program if it is shown that recovery would be against equity and good conscience, or against the public interest:

(i) Factors to consider when determining if recovery of a debt that arises out of the Student-Loan Repayment Program would be against

equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(b) [Reserved]

■ 24. Amend § 213.14 by revising the introductory text to read as follows:

§ 213.14 Contracting for collection services.

USAID has entered into a cross-servicing agreement with the Bureau of the Fiscal Service (Fiscal Service) of the U.S. Department of the Treasury. Fiscal Service is authorized to take all appropriate action to enforce the collection of accounts referred to it in accordance with applicable statutory and regulatory requirements. Fiscal Service bases any applicable fees on the funds collected, and will collect such fees from the debtor along with the original amount of the indebtedness. After referral, Fiscal Service will be solely responsible for the maintenance of the delinquent debtor records in its possession, and for updating the accounts as necessary. Fiscal Service may take any of the following collection actions on USAID's behalf:

* * * * *

■ 25. Amend § 213.15 by revising the section heading, introductory text, and paragraphs (b) introductory text, (b)(2)(ii) and (iii), and (c) and removing paragraph (d).

The revisions read as follows:

§ 213.15 Use of credit-reporting bureaus.

USAID reports delinquent debts owed to it to appropriate credit-reporting bureaus through the cross-servicing agreement with the Bureau of the Fiscal Service (Fiscal Service) at the U.S. Department of the Treasury.

* * * * *

(b) Before referring claims to Fiscal Service and disclosing debt information to credit-reporting bureaus, USAID will have done the following:

* * * * *

(2) * * *

(ii) If the debtor does not pay the debt 90 days after receiving the initial written demand-for-payment notice, USAID intends to refer the debt to Fiscal Service and disclose to a credit-reporting agency the information authorized for disclosure by this subpart; and

(iii) The debtor can request an Agency review or waiver, where applicable.

(c) Before submitting information to a credit-reporting bureau, USAID will provide a written statement to Fiscal Service that the Agency has taken all required actions. Additionally, Fiscal Service thereafter will update the accounts as necessary during the period it holds the account information.

§ 213.17 [Amended]

■ 26. Amend § 213.17 in the first sentence by adding the words “or she” after the word “he”.

§ 213.19 [Amended]

■ 27. Amend § 213.19 in the first sentence of paragraph (a) by removing the word “penalty” and adding “penalties,” in its place.

Subpart C—Administrative and Salary Offset

■ 28. Revise the heading for subpart C to read as set forth above.

■ 29. Amend § 213.20 by:

■ a. Revising paragraphs (a)(1), (a)(2)(ii), (a)(3)(i), and (b);

■ b. Removing paragraph (c);

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

■ d. Revising the subject heading to newly redesignated paragraph (d) and revising paragraph (d)(1); and

■ e. In newly redesignated paragraphs (f)(1) and (f)(2)(ii), removing “creditor agency” and adding “creditor Agency” in its place.

The revisions read as follows:

§ 213.20 Administrative offset of nonemployee debts.

* * * * *

(a) * * *

(1) The CFO collects debts by administrative offset only after USAID has sent the debtor a written demand-for-payment notice that outlines the type and amount of the debt, the intention of the Agency to use administrative offset to collect the debt, and explaining the debtor's rights under 31 U.S.C. 3716.

(2) * * *

(ii) The opportunity for a review within USAID of the Agency's decision related to the claim(s); and

* * * * *

(3) * * *

(i) The offset is in the nature of a recoupment;

* * * * *

(b) *Interagency offset.* The CFO may offset a debt owed to another Federal Department or Agency from amounts due or payable by USAID to the debtor,

or may request another Federal Department or Agency to offset a debt owed to USAID. The CFO, through USAID's cross-servicing arrangement with the Bureau of the Fiscal Service (Fiscal Service) within the U.S. Department of the Treasury, may request the Internal Revenue Service to offset an overdue debt from a Federal income-tax refund due to the debtor. Fiscal Service may also garnish the salary of a private-sector employee when reasonable attempts to obtain payment have failed. USAID will make interagency offsets from an employee's salary in accordance with the procedures contained in §§ 213.22 and 213.23.

* * * * *

(d) *Review of a decision to offset the debt.* (1) USAID will not offset the debt while a debtor is seeking review of the debt under this section, or under another statute, regulation, or contract. However, interest, penalties, and administrative costs will continue to accrue during this period, unless otherwise waived by the CFO. The CFO may initiate offset as soon as practical after the completion of a review, or after a debtor waives the opportunity to request review.

* * * * *

■ 30. Amend § 213.21 by revising paragraph (b) to read as follows:

§ 213.21 Employee salary offset—general.

* * * * *

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed USAID and debts owed to other Federal Departments and Agencies by USAID's employees. USAID will make every effort reasonably and lawfully possible to collect administratively any amounts owed by its employees prior to initiating collection by salary offset. An amount advanced to an employee for per diem or mileage allowances in accordance with 5 U.S.C. 5705, but not used for allowable travel expenses, is recoverable from the employee by salary offset without regard to the due-process provisions in § 213.22. This section does not apply to debts for which another statute collection explicitly provides for, or prohibits, salary offset (*e.g.*, travel advances under 5 U.S.C. 5705 and employee-training expenses under 5 U.S.C. 4108).

* * * * *

■ 31. Amend § 213.22 by revising the section heading and paragraphs (c)(4) and (9), and (d), the paragraph (f) subject heading, and paragraphs (f)(1), (g), (k)(1), (n) introductory text, and (n)(1) and (3) to read as follows:

§ 213.22 Salary offset when USAID is the creditor Agency.

* * * * *

(c) * * *
(4) An explanation of the requirements concerning interest, penalties, and administrative costs;

* * * * *

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the assessment of interest, penalties, and administrative costs, and the commencement of collection proceedings;

* * * * *

(d) *Request for a hearing.* An employee may request a hearing by filing a written, signed request to the Office of the Chief Financial Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, USAID Annex, Room 8.80D, Washington, DC 20523–4601. The request must state the basis upon which the employee disputes the proposed collection of the debt. The employee must sign the request, and USAID must receive it within 15 days of his or her receipt of the notification of proposed deductions. The employee should submit, in writing, all facts, evidence, and witnesses that support his or her position to the CFO within 15 days of the date of the request for a hearing. The CFO will arrange for the services of a hearing official not under the control of USAID, and will provide the hearing official with all documents relating to the claim.

* * * * *

(f) *Form of hearing, written response, and final decision.* (1) Normally, a hearing will consist of the hearing official's making a decision based on a review of the claims file and any materials submitted by the debtor. However, in instances in which the hearing official determines that the validity of the debt turns on an issue of veracity or credibility that the review of documentary evidence cannot resolve, the hearing official, at his or her discretion, may afford the debtor an opportunity for an oral hearing. Such an oral hearing will consist of a conference before a hearing official in which the employee and the Agency will have the opportunity to present evidence, witnesses, and argument. If desired, the employee may be represented by an individual of his or her choice. The Agency shall maintain a summary record of oral hearings provided under the procedures in this section.

* * * * *

(g) *Request for waiver.* In certain instances, an employee may have a

statutory right to request a waiver of overpayment of pay or allowances (*e.g.*, 5 U.S.C. 5584 or 5 U.S.C. 5724(i)). When an employee requests waiver consideration under a right authorized by statute, the Agency will suspend further collection on the debt until it makes a final administrative decision on the waiver request. However, when it appears that an employee's resignation, termination, or other action may prejudice the Government's ability to recover the debt, the suspension of recovery is not required. During the period of the suspension, USAID will not assess interest, penalties, charges, and administrative costs against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already provided the debtor under a request for waiver. See § 213.13.

* * * * *

(k) * * *

(1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's written demand-for-payment notice of intention to collect, from the employee's current pay unless he or she has paid the debt or filed a timely request for a hearing on issues for which a hearing is appropriate.

* * * * *

(n) *Interest, penalties, and administrative cost.* USAID will assess interest, penalties, and administrative costs on debts collected under the procedures in this section. Interest, penalties, and administrative costs will continue to accrue during the period that the debtor is seeking a review of the debt or requesting a waiver. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) USAID will start to assess interest on all debts not collected by the payment due date specified in the initial written demand-for-payment notice. USAID will waive the collection of interest and administrative charges on the portion of the debt paid within 30 days after the date on which interest begins to accrue.

* * * * *

(3) Deductions by administrative offset normally begin prior to the time for assessment of a penalty. Therefore, USAID will not assess a penalty charge unless deductions occur more than 90 days from the due date in the initial written demand-for-payment notice.

* * * * *

■ 32. Amend § 213.23 by:

■ a. Revising the section heading;

■ b. Removing “creditor agency” and “creditor agency's” and adding in their places “creditor Agency” and “creditor

Agency's", respectively, wherever they appear; and

■ c. Revising paragraph (b).

The revisions read as follows:

§ 213.23 Salary offset when USAID is not the creditor Agency.

* * * * *

(b) *Requests to USAID by another Agency to offset salary.* Requests for salary offset must be sent to the Office of the Chief Financial Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, USAID Annex, Room 8.80D, Washington, DC 20523-4601.

* * * * *

Subpart D—Compromise of Claims

■ 33. Revise the heading for subpart D to read as set forth above.

■ 34. Revise § 213.24 to read as follows:

§ 213.24 General.

The CFO may compromise claims for money or property when the principal balance of a claim, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000. Where the claim exceeds \$100,000, the authority to accept the compromise rests with DOJ. The CFO may reject an offer of compromise in any amount. DOJ's approval is not required if the Agency rejects a compromise offer. When the claim exceeds \$100,000 and the CFO recommends acceptance of a compromise offer, he or she will refer the claim with his or her recommendation to DOJ for approval. The referral may be in the form of the Claims-Collection Litigation Report (CCLR) and will outline the basis for USAID's recommendation. USAID refers compromise offers for claims in excess of \$100,000 to the Commercial Litigation Branch of the Civil Division of the Department of Justice, Washington, DC 20530, unless otherwise provided by DOJ's delegations or procedures.

■ 35. Revise § 213.25 to read as follows:

§ 213.25 Standards for the compromise of claims.

(a) The CFO may compromise a claim pursuant to this section if USAID cannot collect the full amount because:

(1) The debtor is unable to pay the full amount of the debt within reasonable time, as verified through credit reports or other financial information;

(2) The Federal Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court;

(b) In evaluating the debtor's inability to pay, the CFO may consider, among other factors, the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; or

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Federal Government's ability to enforce collection;

(c) The CFO may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is significant doubt concerning the Federal Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or because of a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, USAID will give proportionate weight to the likely amount of court costs and attorney fees the Government could incur if it is unsuccessful in litigation;

(d) The CFO may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection might be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, USAID may consider the positive effect that enforced collection of the claim could have on the collection of other similar claims;

(e) To assess the merits of a compromise offer, the CFO should obtain a current financial statement from the debtor, executed under penalty of perjury, that shows the debtor's assets, liabilities, income and expense; and

(f) The CFO may compromise statutory penalties, forfeitures, or debts established as an aid to enforcement, and to compel compliance, when he or she determines that accepting the offer will serve the Agency's enforcement policy adequately, in terms of deterrence and securing compliance (both present and future).

Subpart E—Suspension or Termination of Collection Action

§ 213.29 [Amended]

■ 36. Amend § 213.29 by removing "penalty charges" and adding "penalties," in its place.

■ 37. Amend § 213.30 by:

■ a. Revising the section heading;

■ b. Adding the words "or her" after "his" in paragraph (c); and

■ c. Revising paragraphs (d) introductory text and (e).

The revisions read as follows:

§ 213.30 Standards for suspension of collection action.

* * * * *

(d) The CFO may suspend collection activities on debts of \$100,000 or less during the pendency of a permissive waiver or administrative review when there is no statutory requirement and he or she determines that:

* * * * *

(e) The CFO will decline to suspend collection when he or she determines that the request for waiver or administrative review is frivolous, or that the debtor made it primarily to delay collection.

§ 213.31 [Amended]

■ 38. Amend § 213.31 in the first sentence by removing the word "penalty" and adding "penalties," in its place.

■ 39. Amend § 213.32 by revising the section heading and the introductory text to read as follows:

§ 213.32 Standards for termination of collection action.

The CFO may terminate collection action on a debt when he or she determines that:

* * * * *

■ 40. Revise § 213.34 to read as follows:

§ 213.34 Debts discharged in bankruptcy.

The CFO generally terminates collection activity on a debt discharged in bankruptcy, regardless of the amount. USAID may continue collection activity, however, subject to the provisions of the Bankruptcy Code for any payments provided under a plan of reorganization. The CFO will seek legal advice by the Office of the USAID General Counsel if

he or she believes that any claims or offsets might have survived the discharge of a debtor.

Subpart F—Discharge of Indebtedness and Reporting Requirements

- 41. Revise § 213.35 to read as follows:

§ 213.35 Discharging indebtedness—general.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the CFO must take all appropriate steps to collect such debt, including (as applicable), the following:

- (1) Administrative offset;
- (2) Tax-refund offset;
- (3) Offset of Federal salary;
- (4) Referral to private collection contractors;

(5) Referral to Federal Departments or Agencies that are operating a debt-collection center;

(6) Reporting delinquencies to credit-reporting bureaus;

(7) Garnishing the wages of a delinquent debtor; and

- (8) Litigation or foreclosure.

(b) The CFO will make a determination that collection action is no longer warranted and request that litigation counsel release any liens of record that are securing the debt. Discharge of indebtedness is distinct from the termination or suspension of collection activity, and the Internal Revenue Code might apply. When the CFO suspends or terminates collection action on a debt, the debt remains delinquent, and USAID may pursue further collection action at a later date in accordance with the standards set forth in this part. When a debt is discharged in full or in part, further collection action is prohibited, and USAID must terminate debt-collection action.

- 42. Revise § 213.36 to read as follows:

§ 213.36 Reporting to Department of the Treasury's Internal Revenue Service.

Upon discharge of indebtedness, USAID must report the discharged debt as income to the debtor to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. USAID may request Fiscal Service to file such a discharge debt report to the IRS on the Agency's behalf.

Subpart G—Referrals to the U.S. Department of Justice

- 43. Revise the heading for subpart G to read as set forth above.

- 44. Amend § 213.37 by revising the section heading and paragraph (a) to read as follows:

§ 213.37 Referrals to the U.S. Department of Justice.

(a) The CFO, through USAID's cross-servicing agreement with Fiscal Service and by direct action, refers to DOJ for litigation all claims on which the Federal Government has taken aggressive collection actions but which could not be collected, compromised, suspended, or terminated. USAID makes such referrals as early as possible, consistent with aggressive Agency collection action, and within the period for bringing a timely suit against the debtor. Unless otherwise provided by DOJ's regulations or procedures, USAID refers for litigation debts of more than \$2,500 but less than \$1 million to DOJ's Nationwide Central Intake Facility, as required by the instructions for the Claims-Collection Litigation Report (CCLR). USAID shall refer debts of more than \$1 million to the Civil Division at DOJ.

* * * * *

Subpart H—Mandatory Transfer of Delinquent Debt to U.S. Department of the Treasury

- 45. Revise the heading for subpart H to read as set forth above.

- 46. Revise § 213.38 to read as follows:

§ 213.38 Mandatory transfer of debts to Department of the Treasury's Bureau of the Fiscal Service—general.

(a) USAID's procedures call for the transfer of legally enforceable debt to Fiscal Service 90 days from the date provided on the Agency's initial written demand-for-payment notice issued to the debtor. A debt is legally enforceable if the Agency has made a final determination that the debt, in the amount stated, is due and there are no legal bars to collection action. A debt is not considered legally enforceable for purposes of mandatory transfer to Fiscal Service if a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited.

(b) Except as set forth in paragraph (a) of this section, USAID will transfer any debt covered by this part that is more than 120 days delinquent to Fiscal Service for debt-collection services. A debt is considered 120 days delinquent for purposes of this section if it is 120 days past due and is legally enforceable.

- 47. Amend § 213.39 by revising the introductory text and adding a period at the end of paragraph (f).

The revision reads as follows:

§ 213.39 Exceptions to mandatory transfer.

USAID is not required to transfer a debt to the Financial Management Service (FMS) of the U.S. Department of the Treasury pursuant to § 214.37(b) during such period of time that the debt:

* * * * *

Kent Kuyumjian,

Deputy Chief Financial Officer.

[FR Doc. 2021-11245 Filed 6-10-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9950]

RIN 1545-BP98

Mandatory 60-Day Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the new mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a federally declared disaster. This document also contains final regulations clarifying the definition of “federally declared disaster.” These final regulations affect individuals who reside in or were killed or injured in a disaster area, businesses that have a principal place of business in a disaster area, relief workers who provide assistance in a disaster area, or any taxpayer whose tax records necessary to meet a tax deadline are located in a disaster area.

DATES:

Effective Date: These regulations are effective on June 11, 2021.

Applicability Date: The date of applicability for the amendment to the Procedure and Administration Regulations under section 7508A is December 21, 2019, as explained below in **SUPPLEMENTARY INFORMATION**.

The date of applicability for the amendment to the Income Tax Regulations under section 165 of the Code to clarify the definition of the term “federally declared disaster” is June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew C. Keaton at (202) 317-5404 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 205 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, 133 Stat. 2534, 3226, amended section 7508A of the Code, relating to the discretionary authority of the Secretary of the Treasury or her delegate (Secretary) to postpone certain time-sensitive tax deadlines by reason of a federally declared disaster, by adding section 7508A(d). This provision provides qualified taxpayers a mandatory 60-day period that is to be disregarded “in the same manner as a period specified under [section 7508A(a)].”

On January 13, 2021, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–115057–20, 86 FR 2607) to interpret and implement sections 165(i)(5) and 7508A(d). Five responsive written comments were received. No commenter requested a public hearing, so none was held.

As described more fully in the preamble to the proposed regulations, section 7508A(d) is ambiguous in at least two important respects—the time-sensitive acts to be postponed (beyond the pension-related actions described in section 7508A(d)(4)) are not specified and it is unclear how the mandatory 60-day postponement period is to be calculated when the disaster declaration specified in section 7508A(d) does not contain an incident date. The legislative history is also insufficient to explain these areas of ambiguity.

These final regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 7508A and the Income Tax Regulations (26 CFR part 1) under section 165 to clarify the definition of the term “federally declared disaster.” As described further below, the Department of the Treasury (Treasury Department) and the IRS have modified proposed § 301.7508A–1(g)(4)(iii). Example (3), in these final regulations to better illustrate the calculation of the mandatory 60-day postponement period and to correct typographical errors. No other changes have been adopted.

Comments on the Proposed Regulations

Section 1.165–11(b)(1)

The proposed regulations provided that a federally declared disaster includes both a major disaster and an emergency declared under sections 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 100–707, 102 Stat. 4689 (1988).

One commenter said it approved of the proposed regulations including emergency declarations in the definition of a federally declared disaster under section 165(i)(5)(A). However, another commenter was critical of this portion of the proposed regulations and recommended that it be stricken. This second commenter said emergency declarations are governed by a different set of rules than major disaster declarations, pointing out that emergency declarations (i) do not need to be preceded by a governor’s request for Stafford Act relief (but may instead be declared *sua sponte* by the President), (ii) may only result (if not followed up by a major disaster declaration) in Federal assistance to local governmental entities (as opposed to assistance to individuals), and (iii) may be issued before a disaster. This commenter further opined that President Trump’s letter of March 13, 2020, declaring an emergency under the Stafford Act with respect to the COVID–19 pandemic, was not authorized by Congress to serve as a disaster declaration under sections 165(i)(5)(A) and 7508A of the Code.

The comment from the second commenter is not adopted in the final regulations. In the Explanation of Provisions section of the preamble to the proposed regulations, Part III. Federally Declared Disasters, this issue is already addressed in detail. There is no provision in the Stafford Act to declare a “disaster.” The legislative history of the Stafford Act indicates that the term “disaster” is an umbrella term that includes both an emergency and a major disaster. The Conference Report to the Disaster Relief and Emergency Assistance Act of 1974, Public Law 93–288, 88 Stat. 143 (1974), clarified the definitional section of the Stafford Act, stating: “It was the intention of the conferees not to define the term ‘disaster’ specifically; whenever used in this legislation such term includes an emergency or a major disaster.” H.R. Rep. 93–1037, p. 26 (May 13, 1974).

The opening section of the Stafford Act, titled “Congressional findings and declarations,” uses the generic term “disaster” in laying out the key congressional findings and declarations that underlie the rest of the chapter’s provisions. Stafford Act section 101(a), 42 U.S.C. 5121(a). In multiple revenue rulings, the IRS has provided that, for the purposes of section 165(i), a federally declared disaster includes an emergency or a major disaster declared under the Stafford Act. Several of these revenue rulings are cited in the preamble to the proposed regulations.

The differences noted by the commenter between emergencies and major disasters under the Stafford Act are not material to their treatment under sections 165(i)(5)(A) and 7508A of the Code. Most disaster declarations announced by the Federal Emergency Management Agency (FEMA) for particular states also provide only public assistance, and no individual assistance, to particular counties in the state under the Stafford Act. In addition, most emergency declarations announced by FEMA are under section 501(a) of the Stafford Act, and begin with a request from a governor or other chief executive of a state, territory, or tribal government. As noted in the preamble to the proposed regulations, it is rare for an emergency declaration to be made without such a request. The President is authorized to make an emergency declaration under section 501(b) of the Stafford Act when the United States will have the primary responsibility for response to the emergency. There is no difference in the need for affected persons in a state threatened with a disaster to receive relief from time-sensitive deadlines to perform specified acts under the Code when the request for such relief originates with the state’s governor or is independently raised by the President. Consequently, the final regulations make no changes to this portion of the proposed regulations.

Section 301.7508A–1(g)(1)–(2)

The proposed regulations provided that (excluding the pension-related acts described in section 7508A(d)(4)) the time-sensitive tax acts that are postponed for the mandatory 60-day postponement period are the acts, if any, that the Secretary determines to be postponed under section 7508A(a) or (b).

One commenter expressed a general concern that this provision had the potential to reduce section 7508A(d) to a nullity. A second commenter expressed its concerns specifically in terms of what it contended was a clear reading of the statute and its legislative history. This commenter said it was clear that Congress intended to postpone the timely performance of all of the time-sensitive tax acts, both taxpayer and government acts, listed in section 7508(a)(1) of the Code. However, this second commenter recommended that the final regulations provide that the government may take advantage of the postponement periods for government-initiated actions only if a taxpayer first acts in reliance on the “automatic” postponement periods for the taxpayer’s time-sensitive tax acts.

A third commenter agreed with the Secretary's characterizations of the statute and legislative history as ambiguous on the issues of which time-sensitive tax acts (other than the pension-related tax acts described in section 7508A(d)(4)) are postponed under section 7508A(d) and of which declared disasters are subject to the mandatory 60-day postponement period under section 7508A(d). This commenter approved of the solution to these ambiguities that was reflected in the proposed regulations, in terms of which time-sensitive tax acts would be postponed. This commenter said section 7508A(d) was a poorly-worded statute, that the legislative history of the provisions contained contradictions, and the result was that section 7508A(d)(1) leaves no (non-pension) time-sensitive tax acts for section 7508A(d) to operate upon, unless or until the Secretary exercises her powers under section 7508A(a).

The third commenter noted also that for the year 2017, the IRS provided relief under section 7508A(a) in response to only 14 of the 59 major disaster declarations announced by FEMA that year. If all major disaster declarations automatically entitled all taxpayers in disaster areas to timing relief under section 7508A(d), the commenter noted that there would be a dramatic increase in the number of disasters leading to postponements of time-sensitive tax acts. On these issues, the third commenter concluded that the proposed regulations properly preserved the discretion of the IRS to determine which declared disasters should result in any type of disaster relief and of which time-sensitive tax acts should be postponed under section 7508A.

The comments from the first two commenters on this issue are not adopted in the final regulations, while the approving comments of the third commenter were already reflected in the proposed regulations. As explained more fully in the Explanation of Provisions section of the preamble to the proposed regulations, Part I. Time-Sensitive Tax Acts, and as noted by the third commenter described above, except for the rules regarding pensions described in section 7508A(d)(4), section 7508A(d), by its terms, does not specify the time-sensitive tax acts to be postponed during the mandatory 60-day postponement period. Instead, section 7508A(d)(1) provides that the mandatory 60-day postponement period "shall be disregarded in the same manner as a period specified under [section 7508A(a)]." Section 7508A(a) is not self-executing, but rather, requires a determination by the Secretary to

specify the acts to be postponed. As a result, the cross-reference to section 7508A(a) in section 7508A(d)(1) operates to require the same determination by the Secretary as a prerequisite to determining the acts to which the mandatory 60-day postponement period applies. This interpretation gives full effect to the statutory language and does not reduce section 7508A(d) to a nullity, because that section still imposes a mandatory period for postponement and establishes a new category of persons eligible for relief—the "qualified taxpayers" defined in section 7508A(d)(2). The final regulations make no changes to § 301.7508A-1(g)(1) and (2) of the proposed regulations.

Section 301.7508A-1(g)(3)(i)

Section 301.7508A-1(g)(3)(i) of the proposed regulations tracked section 7508A(d)(1) and (d)(5) in describing how the mandatory 60-day postponement period for federally declared disasters will be calculated and how the calculation of that mandatory postponement period will interact with the Secretary's discretionary postponement period (if any) under section 7508A(a) and (b). The Explanation of Provisions section of the preamble to the proposed regulations, Part II. Calculation of the Mandatory 60-Day Postponement Period, identified a 120-day postponement period from the beginning incident date of a disaster announced by FEMA as the usual postponement period provided by the IRS for those disasters where the IRS exercises its discretion under section 7508A(a) or (b) to postpone any time-sensitive tax acts.

Consequently, most mandatory 60-day postponement periods under section 7508A(d) will be calculated to run concurrently with the 120-day postponement period the IRS generally provides under section 7508A(a) or (b). Two commenters noted that section 7508A(d)(1) and the proposed regulations did not provide a clear rule for calculating the mandatory 60-day postponement period when there was more than one disaster declaration issued for the same disaster in a particular state or when any disaster declaration was amended to provide any new or modified incident dates (earliest or latest) that were missing or different from when the first disaster declaration for a disaster in a state was announced by FEMA. Two commenters suggested potential alternative methods of making calculations of the mandatory 60-day postponement period more certain when there are multiple disaster declarations or disaster declarations that

are amended by FEMA for the earliest or latest incident dates described in section 7508A(d)(1)(A) and (B).

One commenter claimed that a literal reading of section 7508A(d)(1) creates challenges for indefinite disasters, such as the COVID-19 pandemic, because the statute could be interpreted to postpone a taxpayer's deadlines "indefinitely until some unknown point in time that is long after the disaster began." To avoid this "unworkable application" of the statute, this commenter recommended that if the initial disaster declaration does not expressly identify the latest incident date for a disaster, then section 7508A(d) should be interpreted as automatically providing a postponement period until the date that is 60 days after the earliest incident date specified in a disaster declaration. However, the statute mitigates the commenter's concern by directing that the postponement period under section 7508A(d) "shall be disregarded in the same manner as a period specified under subsection (a)." That provision ensures that the Secretary retains the same discretion as she has under section 7508A(a) to determine what time-sensitive tax acts, if any, will be postponed.

A second commenter noted what it characterized as a pick-and-choose problem and an amendment problem with the method of calculating the mandatory 60-day postponement period provided for in the proposed regulations and recommended the Secretary adopt one of several alternative bright-line rules it suggested for making the calculation period more predictable.

This second commenter noted there was a potential pick-and-choose problem among multiple potential FEMA-announced disaster declarations, because the Treasury Department and the IRS propose to treat FEMA-announced emergency declarations (as well as major disaster declarations) under the Stafford Act as federally declared disasters under sections 165 and 7508A of the Code. This commenter's recommendation to strike proposed amended regulation § 1.165-11(b)(1) is discussed and rejected in the preamble discussion of this issue above.

Alternatively, the second commenter recommended that the final regulations reflect a bright-line rule to address potential multiple declarations, such as a first-out rule (the first issued declaration controls), a rule that a later major disaster declaration controls over an earlier emergency declaration, or a rule that the issue date of an emergency declaration is the earliest incident date for section 7508A(d)(1)'s mandatory 60-day postponement period.

The second commenter further recommended in this section of the final regulations that the Treasury Department and the IRS provide a bright-line rule concerning the effect of potential amendments to an initial FEMA announced disaster declaration on how the mandatory 60-day postponement period is calculated. The additional potential bright-line alternatives suggested by the second commenter were that (i) future amendments will not affect how the mandatory period is calculated, or (ii) only amendments made within a certain amount of time (say one year) will affect the computation of the mandatory period.

The Treasury Department and the IRS appreciate the predictability offered by the bright-line rules suggested by the second commenter. Nevertheless, the statutory language providing for a mandatory period beginning on the earliest incident date specified in the disaster declaration and ending on the date which is 60 days after the latest incident date so specified is capable of being applied as written. While amendments to disaster declarations and shifting “latest” incident dates can cause confusion, the intent of the statute is to ensure that relief is provided throughout the disaster period, assuming such a period is identified in the disaster declaration and the Secretary has determined that postponement of time-sensitive tax acts is warranted. As a result, the comment on this issue is not adopted in the final regulations.

Section 301.7508A-1(g)(3)(ii)(A)

The proposed regulations provided that in no event will the mandatory 60-day postponement period be calculated to exceed one year. One commenter stated that this portion of the proposed regulations should be removed because it lacks any basis in the text or legislative history of section 7508A(d)(1) or (d)(4).

The comment on this issue is not adopted in the final regulations. As stated in the Explanation of Provisions section of the preamble to the proposed regulations, Part II. Calculation of the Mandatory 60-Day Postponement Period, it defies logic for the Secretary’s discretionary postponement period under section 7508A(a) to be limited to “a period of up to 1 year,” and there be no limit on the mandatory 60-day postponement period under section 7508A(d). Interpreting section 7508A(d) to allow postponement periods for more than 1 year would be contrary to the directive of section 7508A(d)(1) that the mandatory 60-day postponement period

must “be disregarded in the same manner as a period specified under [section 7508A(a)].” The final regulations make no change to § 301.7508A-1(g)(3)(ii)(A) of the proposed regulations.

Section 301.7508A-1(g)(4)(iii) Example (3)

The proposed regulations provided an Example (3) concerning a continuing disaster declaration involving wildfires that was later amended by a subsequent FEMA announcement of a latest incident date for the disaster. This example contained typographical errors, including a misnumbering—“(5)” instead of “(4)” —of the subparagraph for the four examples and referring to the taxpayer in the example variously as “Individual C” and “Individual D.”

One commenter further noted that the intended rules, if any, which Example (3) was meant to illustrate were not described in the portions of the proposed regulations which precede the Examples section.

Example (3) is intended to illustrate the calculation of the mandatory 60-day postponement period in the event of an ongoing disaster with multiple declarations and shifting “latest” incident dates described in § 301.7508A-1(g)(3) of these final regulations. The Treasury Department and the IRS have modified Example (3) in these final regulations, in consideration of the comment above as well as the comments received on § 301.7508A-1(g)(3)(i), to better illustrate the calculation of the mandatory 60-day postponement period and to correct typographical errors.

Section 301.7508A-1(h)(2)

The proposed regulations provided that the final regulations shall apply to all disasters declared on or after December 21, 2019.

One commenter requested not only that the final regulations not be retroactive to the effective date of section 7508A(d), but that the final regulations provide relief to any individuals or employee benefit plans that took actions (or failed to take actions) based on a good faith and reasonable interpretation of the postponement relief provided in section 7508A. The commenter further requested that such good faith relief be available for at least 60 days after the final regulations are published in the **Federal Register**.

The Applicability Date discussion in the preamble to the proposed regulations clearly indicated the intention of the Treasury Department and the IRS to rely on the provisions of

section 7805(b)(2) of the Code for the applicability date of these final regulations. Section 7805(b)(2) provides that regulations filed or issued within 18 months of the date of enactment of the statutory provision to which the regulations relate are not prohibited from applying retroactively to the date of enactment. Section 7508A(d) was enacted on December 20, 2019, and these final regulations have been filed or issued within 18 months of that date of enactment. The proposed regulations were clear in stating that the Treasury Department and the IRS intended for the final regulations to apply to any disasters that were declared on or after December 21, 2019. These final regulations do not adopt the commenter’s request to modify § 301.7508A-1(h)(2) of the proposed regulations.

New Rule Proposal

One commenter requested that the final regulations “confirm” that all forms of deadline relief requested under section 7508A are optional for affected taxpayers. In particular, the commenter focused on deadlines arising under employee benefit plans. In some cases, the application of these deadlines may affect both the plan and the participants. After consideration, the Treasury Department and the IRS have concluded that the suggestions made in this comment are beyond the intended scope of the proposed regulations. Consequently, the suggestions are not adopted in these final regulations.

Modifications of Proposed Regulations

Section 301.7508A-1(g)(4)(iii) Example (3)

Example (3) is modified to better illustrate the calculation of the mandatory 60-day postponement period in the event of multiple declarations and shifting “latest” incident dates, and to correct typographical errors.

Applicability Dates

For date of applicability for the amendment to the Procedure and Administration Regulations under section 7508A, see § 301.7508A-1(h), which provides that the regulations promulgated by this Treasury decision are applicable for federally declared disasters that are declared on or after December 21, 2019, as explained in the preamble to the proposed regulations (REG-115057-20) published in the **Federal Register** (86 FR 2607), because section 7805(b)(2) of the Internal Revenue Code (Code) provides that regulations filed or issued within 18 months of the date of the enactment of

the statutory provision to which they relate may apply to taxable periods prior to those described in section 7805(b)(1) and these final regulations are being published within 18 months of the enactment of section 7508A(d) on December 20, 2019.

The date of applicability for the amendment to the Income Tax Regulations under section 165 of the Code to clarify the definition of the term “federally declared disaster” is June 11, 2021.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and affirmed by Executive Order 13563. Therefore, a regulatory assessment is not required.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations clarify how the Secretary may postpone certain time-sensitive tax deadlines by reason of a federally declared disaster. Such postponements provide more time for affected taxpayers to complete time-sensitive acts than they otherwise would have under the internal revenue laws. In addition, the regulations do not impose a collection of information burden on any person, including small entities, for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these final regulations are Andrew C. Keaton and William V. Spatz of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.165–11 is amended by revising paragraphs (b)(1) and (h) to read as follows:

§ 1.165–11 Election to take disaster loss deduction for preceding year.

* * * * *

(b) * * *

(1) A *federally declared disaster* means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). A federally declared disaster includes both a major disaster declared under section 401 of the Stafford Act and an emergency declared under section 501 of the Stafford Act.

* * * * *

(h) *Applicability dates*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to elections and revocations that are made on or after October 16, 2019.

(2) *Paragraph (b)(1) of this section.* The second sentence of paragraph (b)(1) of this section applies to elections and revocations that are made on or after June 11, 2021.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 4.** Section 301.7508A–1 is amended by revising paragraph (g) and adding paragraph (h) to read as follows:

§ 301.7508A–1 Postponement of certain tax-related deadlines by reasons of a federally declared disaster or terrorist or military action.

* * * * *

(g) *Mandatory 60-day postponement*—(1) *In general.* In addition to (or concurrent with) the postponement period specified by the

Secretary in an exercise of the authority under section 7508A(a) to postpone time-sensitive acts by reason of a federally declared disaster, qualified taxpayers (as defined in section 7508A(d)(2)) are entitled to a mandatory 60-day postponement period during which the time to perform those time-sensitive acts is disregarded in the same manner as under section 7508A(a). The rules of this paragraph (g)(1) apply with respect to a postponement period specified by the Secretary under section 7508A(b), to postpone acts as provided in section 7508A(d)(4). Except for the acts set forth in paragraph (g)(2) of this section, section 7508A(d) does not apply to postpone any acts.

(2) *Acts postponed.* The time-sensitive acts that are postponed for the mandatory 60-day postponement period are the acts determined to be postponed by the Secretary's exercise of authority under section 7508A(a) or (b). In addition, in the case of any person described in section 7508A(b), the time-sensitive acts postponed for the mandatory 60-day postponement period include those described in section 7508A(d)(4):

(i) Making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2);

(ii) Making distributions under section 408(d)(4);

(iii) Recharacterizing contributions under section 408A(d)(6); and

(iv) Making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3).

(3) *Calculation of mandatory 60-day postponement period*—(i) *In general.* The mandatory 60-day postponement period begins on the earliest incident date specified in a disaster declaration for a federally declared disaster and ends on the date that is 60 days after the latest incident date specified in the disaster declaration. In accordance with section 7508A(d)(5), the mandatory 60-day postponement period under section 7508A(d) runs concurrently with the postponement period determined by the Secretary in exercising discretion under section 7508A(a) or (b) if the period determined by the Secretary is equal to or longer than 60 days after the latest incident date. If the period determined by the Secretary in exercising discretion under section 7508A(a) or (b) ends prior to 60 days after the latest incident date, in accordance with section 7508A(d)(5), the mandatory 60-day postponement period will run concurrently for the length of the period determined by the Secretary under section 7508A(a) or (b) and then continue running in addition to the period determined by the Secretary under section 7508A(a) or (b).

(ii) *Limitations on the mandatory 60-day postponement period.* (A) In no event will the mandatory 60-day postponement period be calculated to exceed one year.

(B) In the event the Secretary determines to postpone time-sensitive acts pursuant to a declaration establishing a federally declared disaster for purposes of section 7508A that does not specify an incident date, there is no mandatory postponement period under section 7508A(d). In such cases, the only postponement period will be the period determined by the Secretary under section 7508A(a) or (b).

(4) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

(i) *Example (1).* Individual A lives in a state that experienced severe but isolated tornado damage on March 15. On March 20, FEMA issued a **Federal Register** Notice announcing a major disaster declaration approved by the President for the state where Individual A lives, describing the incident date for the tornado as March 15. Based upon that major disaster declaration, the IRS published a news release identifying the taxpayers (by county) affected by the disaster for purposes of section 7508A and specifying the time-sensitive acts that are postponed and a period of postponement from March 15 through July 31, pursuant to section 7508A(a). The county where Individual A lives was included in the news release. Under section 7508A(d), the mandatory 60-day postponement period that Individual A is entitled to begins on March 15 and ends 60 days after March 15, on May 14. The mandatory postponement period applies to the same time-sensitive acts and runs concurrently with the relief the IRS provided to Individual A under section 7508A(a).

(ii) *Example (2).* Individual B lives in a coastal state which experienced harmful effects from a hurricane that began to affect the weather in his state on August 15 and ceased to be a weather factor in his state on August 19. On August 22, FEMA issued a **Federal Register** Notice announcing a major disaster declaration approved by the President, determining that the coastline counties in the state, including the county where Individual B lives, were severely affected and that these counties were entitled to both individual assistance and public assistance. The major disaster declaration specified the earliest incident date for the hurricane in the state where Individual B lives as August 15 and the latest incident date as August 19. Based upon that major disaster declaration, the IRS published a news release identifying the taxpayers

affected by the disaster for purposes of section 7508A and specifying the time-sensitive acts that are postponed and a period of postponement from August 15 through December 31, pursuant to section 7508A(a). Under section 7508A(d), the mandatory 60-day postponement period that Individual B is entitled to begins on August 15 and ends 60 days after August 19, on October 18. The mandatory postponement period applies to the same time-sensitive acts and runs concurrently with the relief the IRS provided to Individual B under section 7508A(a).

(iii) *Example (3).* Individual C lives in a county of a state that is experiencing ongoing wildfires. On August 14, FEMA issued a **Federal Register** Notice announcing an emergency declaration approved by the President to make public assistance available under the Stafford Act to local governments to fight the wildfires. This declaration specified an earliest incident date of August 14 and no latest incident date. On August 17, FEMA issued a **Federal Register** Notice announcing a major disaster declaration approved by the President for the same wildfires incident, announcing that the residents of the county where Individual C lives were eligible to receive individual assistance under the Stafford Act. This declaration specified August 15 as the earliest incident date and described the incident period as ongoing. Based upon that major disaster declaration, the IRS exercised its discretion under section 7508A(a) to publish a news release identifying the taxpayers (by county) affected by the wildfires disaster for purposes of section 7508A and specifying both the time-sensitive acts that are postponed and a period of postponement from August 15 through December 15. Following the initial news release, the wildfires disaster remained ongoing, with no ending incident date specified, for several months. The IRS published a second news release postponing the time-sensitive acts through January 15. FEMA subsequently amended the major disaster declaration to specify the latest incident date of November 19. Because the IRS acted in its discretion to provide relief in response to the major disaster declaration, and not to provide relief in response to the emergency declaration, the mandatory 60-day postponement period that Individual C is entitled to under section 7508A(d) begins on August 15, the earliest incident date specified in the major disaster declaration, and ends 60 days after the latest incident date of November 19. The

mandatory postponement period applies to the same time-sensitive acts and runs concurrently with the relief the IRS provided to Individual C under section 7508A(a), and ends on January 18, which is 60 days after the latest incident date and three days beyond the postponement period specified by the IRS under section 7508A(a) in its news release.

(iv) *Example (4).* Individual D lives in the United States, which is experiencing a nationwide emergency as a result of its residents being exposed to a highly infectious and dangerous pandemic disease. On March 13, the President declared a nationwide emergency under section 501(b) of the Stafford Act. The pandemic became a federally declared disaster for purposes of section 7508A on March 13, however, no incident date was specified in the President's emergency declaration. Pursuant to the President's March 13 emergency declaration, the IRS published several notices identifying the taxpayers affected by the disaster for purposes of section 7508A and specifying the time-sensitive acts that are postponed and a period of postponement that generally ran from April 1 through July 15, pursuant to section 7508A(a). Because, in this circumstance, the emergency declaration pursuant to which the notices were published did not specify an incident date, there is no mandatory postponement period under section 7508A(d). The only postponement period is the period determined by the Secretary pursuant to the discretionary authority under section 7508A(a).

(h) *Applicability dates—(1) In general.* Except as provided in paragraph (h)(2) of this section, this section applies to disasters declared after January 15, 2009.

(2) *Paragraph (g) of this section.* Paragraph (g) of this section applies to disasters declared on or after December 21, 2019.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: May 25, 2021.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2021-12311 Filed 6-10-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

28 CFR Part 31

[Docket No.: OJP (OJJDP) 1782]

RIN 1121-AA83

Juvenile Justice and Delinquency Prevention Act Formula Grants Program

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Office of Justice Programs, is amending the Formula Grants Program implementing regulation authorized under title II, part B, of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) and promulgated in 1996, to remove sections and/or provisions that were rendered obsolete by amendments made to the JJDP Act in 2002 or in 2018; are redundant; or are *ultra vires*. Additional technical corrections reflect an editorial reclassification of the United States Code, implemented on September 1, 2017, that reorganized certain existing provisions of the United States Code into a new title, and citations are updated to reflect sections of the Act that were re-numbered by the 2002 amendments. Finally, the definitions in the regulation have been rearranged to be listed in alphabetical order.

DATES: This rule is effective June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Keith Towery, Grants Management Specialist, Office of Juvenile Justice and Delinquency Prevention, at 202-307-0648.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this regulatory action is to amend the Formula Grants Program implementing regulation at 28 CFR part 31, subpart A, authorized under title II, part B, of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) and promulgated in 1996, to remove sections and/or provisions that (1) were rendered obsolete by amendments made to the JJDP Act in 2002 by Public Law 107-273 (the “2002 amendments”) or by Public Law 115-385 (the “2018 amendments”); (2) are redundant; or (3) are *ultra vires*. Additional technical corrections reflect an editorial reclassification of the United States Code, implemented on September 1, 2017, that reorganized certain existing provisions of the United States Code

from title 42 into a new title 34, and citations are updated to reflect sections of the Act that were re-numbered by the 2002 amendments. Finally, the definitions in the regulation have been rearranged to be listed in alphabetical order.¹ OJP implements this rule pursuant to the rulemaking authority under 34 U.S.C. 11111.

B. Estimated Costs and Benefits

As noted in the preamble above, this rule removes provisions of the Formula Grants Program regulation that (1) were rendered obsolete by amendments made to the JJDP Act in 2002 by Public Law 107-273 (the “2002 amendments”) or by Public Law 115-385 (the “2018 amendments”); (2) are redundant; or (3) are *ultra vires*. This rule also makes technical corrections to the regulation. These changes, overall, reasonably can be expected to save at least a *de minimis* amount of grantee staff time in understanding program requirements when compared to the current rule, and thus the rule is deregulatory. With respect to the provisions of the Formula Grants Program regulation to be removed as *obsolete*, States have been advised by OJJDP not to follow those provisions, and/or OJJDP has not been enforcing those provisions. Thus, removing those provisions will result in no additional or reduced burden on states. The removal of provisions that are *redundant*, because they simply parrot language in the JJDP Act, do not impose or reduce requirements of state grantees, and accordingly neither increase nor decrease costs or burdens on states. This rule makes *technical corrections* to the Formula Grants Program regulation that reflect the 2002 and 2018 amendments, most of which reflect simple renumbering of sections or provisions of the JJDP Act, but do not make changes that would impose additional requirements on states. Finally, the three provisions in the regulation that are being removed as *ultra vires* have not been enforced by OJJDP in recent years; their removal will not result in any additional costs, and may result in *de minimis* savings in grantee staff time, as noted above.

II. Background

This rule amends the regulation implementing the JJDP Act Formula Grants Program at 28 CFR part 31, subpart A. OJJDP administers the Formula Grants Program, pursuant to

title II, part B, of the JJDP Act, now codified at 34 U.S.C. 11131–11133, which authorizes OJJDP to provide an annual grant to each State to improve its juvenile justice system and to support juvenile delinquency prevention programs. Title II, part B, of the JJDP Act authorizes OJJDP to provide formula grants to states to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system. The JJDP Act was originally enacted in 1974, authorizing the Formula Grants Program under title II, part B, and was reauthorized and/or amended in 1980,² 1984,³ 1988,⁴ 1992,⁵ 2002,⁶ and 2018.⁷ It should be noted that this final rule, which is purely technical in character, does not reflect amendments made by the Juvenile Justice Reform Act of 2018 (Pub. L. 115-385), unless they are purely technical in nature, or reflect provisions that were rendered obsolete. Any substantive changes will be made in a future regulation that will be published for notice and public comment.

OJP’s Formula Grants Program implementing regulation was first published on May 31, 1995, and amended on December 31, 1996. In the 2002 amendments to the JJDP Act, several statutory provisions were repealed, but those statutory amendments were not reflected in the only post-1996 amendment to the implementing regulation (promulgated in January 2017). This final rule, among other things, amends the regulation to reflect the repeal, in 2002, of those statutory provisions, as well as the repeal of statutory provisions based on the 2018 amendments. Finally, it should be noted that many provisions that currently exist in this regulation have been superseded by 28 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), references to which are to be understood as references to part 200 as adopted for the Department of Justice by 28 CFR part 2800. In addition, it should be noted that, among other things, title II

¹ For a redlined version that shows the changes made to the Formula Grants Program regulation by this Final Rule, please visit OJJDP’s website at www.ojjdp.gov. See also Appendix A for a table that indicates, by section, where edits have been made to the regulation.

² Public Law 96-509.

³ Public Law 98-473.

⁴ Public Law 100-690.

⁵ Public Law 102-586.

⁶ Public Law 107-273.

⁷ Public Law 115-385.

of the JJDP Act adopts by reference certain provisions of the Omnibus Crime Control and Safe Streets Act of 1968, making them applicable to the title II Formula Grants Program. *See* 34 U.S.C. 11182(b) and (c). These referenced provisions include, but are not limited to, the provisions found at 34 U.S.C. 10228(c) (prohibition on discrimination); 34 U.S.C. 10230(a) (recordkeeping requirement); 34 U.S.C. 10230(b) (access to records for audit and examination); 34 U.S.C. 10230(c) (audit and examination period after completion of program or project); 34 U.S.C. 10231(a) (research or statistical information; immunity from process; prohibition against admission as evidence or use in any proceedings).

III. Discussion of Changes Made by This Rule⁸

A. Removal of Sections That Are Obsolete

The current regulation prescribes requirements that were pertinent to Formula Grants Program requirements that were repealed in the 2002 and 2018 amendments. Those provisions of the current regulation that purport to implement requirements that were repealed by the 2002 and 2018 statutory amendments are not valid. *See, e.g., Hadson Gas Sys., Inc. v. FERC*, 316 U.S. App. D.C. 98, 75 F.3d 680, 684 (D.C. Cir. 1996) (where Congress enacts a new statute or amends an existing one, administrative regulations may be rendered unnecessary or obsolete and the prior regulations need not be repealed by notice and comment); *Messick ex rel. Kangas v. United States*, 70 Fed. Cl. 319, 328 (2006) (holding that a regulation that had failed to keep up with statutory changes was to be “disregarded”), *rev’d on other grounds* sub nom. *Amber-Messick ex rel. Kangas v. United States*, 483 F.3d 1316 (Fed. Cir. 2007).

B. Removal of Sections That Merely Repeat Provisions of the JJDP Act or Other Law

Several sections of the Formula Grants Program regulation do no more than parrot existing statutory provisions within the JJDP Act or provisions such as those in the Omnibus Crime Control and Safe Streets Act of 1968 that are noted above, and thus are unnecessarily repeated in the regulation.

C. Removal of Sections That Are Ultra Vires

The following three provisions of the regulation are being removed because they are contrary to specific provisions within the JJDP Act, or are generally outside the scope of the Administrator’s authority, and are, therefore, “*ultra vires*”—“unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law.” Black’s Law Dictionary (10th ed. 2014).

Section 31.301(e)

This provision of the current regulation purports to describe how OJJDP may use funds that were originally allocated to a state that is subsequently determined to be ineligible for a formula grant award (including because it has not met one or more of the 33 eligibility requirements set forth at section 223(a) of the JJDP Act), or has chosen not to submit an application for a formula grant award. Section 223(d) of the JJDP Act, however, requires that OJJDP must “endeavor to make that State’s allocation [excluding the allocation for the state advisory group authorized under 34 U.S.C. 11133(a)(3)] available to local public and private nonprofit agencies” within the state and goes on to provide that, if the Administrator is unable to make such an award, the funds must be made available “on an equitable basis and to those States that have achieved full compliance with the core requirements.” (Emphasis added.) Thus, by the express terms of this statutory provision, those funds may not be reallocated to states that were determined to be out of compliance. The third sentence of section 31.301(e) states that, upon “a request for extension, which demonstrates compelling circumstances” OJJDP may reallocate the formula grant funds “back to the State for which the funds were initially allocated,” and thus purports to provide something manifestly contrary to the plain language of section 223(d) of the JJDP Act (34 U.S.C. 11133(d)). Section 31.301(e) is, therefore, *ultra vires* and must be removed.

Section 31.303(f)(1)(i)(A)

Section 31.303(f)(1)(i)(A) purports to require that a state identify in its monitoring universe “all residential facilities which might hold juveniles pursuant to public authority.” The word “residential” is deleted because, section 223(a)(14) of the JJDP Act (34 U.S.C. 11133 (a)(14)) requires that States monitor all “jails, lock-ups, detention facilities, and correctional facilities,” and, plainly, is not limited in scope to

“residential” facilities. Accordingly, the language in this paragraph that purports to limit the reach of the statutory requirement is *ultra vires*. Consequently, section 31.303(f)(1)(i)(A) must be amended accordingly.

Section 31.303(f)(3)(vii)

Among other things, section 223(a)(11)(A)(ii) of the JJDP Act provides that “a juvenile shall not be placed in a secure detention facility or a secure correctional facility” if the juvenile is (in common parlance) a “non-offender” who “is an alien[] or is alleged to be dependent, neglected, or abused.” A “non-offender,” pursuant to 28 CFR 31.304(i), is a “juvenile who is subject to the jurisdiction of the juvenile court . . . for reasons *other than legally prohibited conduct of the juvenile*” (emphasis added); and violation of a valid court order is, as a matter of law, “legally prohibited conduct.” Thus, by definition, a juvenile who has violated a valid court order is not, and cannot be, a “non-offender.” Section 31.303(f)(3)(vii) of the current regulation, however, purports to provide that an erstwhile “non-offender . . . cannot [*sic*] be placed in secure detention or correctional facilities [*sic*] for violating a valid court order.” Consequently, section 31.303(f)(3)(vii) of the current regulation, which purports to extend section 223(a)(11)(A)(ii) of the JJDP Act (which relates only to “non-offenders”) to juveniles who are not “non-offenders” is *ultra vires* and must be removed.

D. Technical Corrections

Several amendments to the Formula Grants Program regulation reflect an editorial reclassification of the United States Code, implemented on September 1, 2017, that reorganized certain existing provisions of the United States Code from title 42 into a new title 34. Additionally, other citations in the current regulation are being updated to reflect sections of the JJDP Act that were re-numbered following the 2002 amendments.

IV. Regulatory Requirements

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the discussion, below, regarding the applicability of the APA, this rule is exempt from the 553(b) notice and comment requirements. Consequently, the RFA does not apply.

Nevertheless, consistent with the analysis typically required by the

⁸ Please see the table at Appendix A detailing the reasons for specific changes made by this Final Rule.

Regulatory Flexibility Act (5 U.S.C. 605(b)), the Office of Juvenile Justice and Delinquency Prevention has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The Formula Grants Program provides funding to States pursuant to a statutory provision, which is not affected by this regulation. Because States have complete discretion as to which local governments and other entities will receive formula grant funds through subgrants, as well as the amount of any subgrants, this rule will have no direct effect on any particular local governments or entities.

Executive Order 12866, Regulatory Planning and Review, 13563 and Improving Regulation and Regulatory Review

This final rule was developed in accordance with the principles of E.O. 12866 and 13563. E.O. 12866, section 1(b), 58 FR 51, 735 (Sept. 30, 1993), which directs 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). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866.

OJP has determined that this regulation is not a “significant regulatory action” under Executive Order No. 12866. As set forth above, this final rule will not have the economic effects described in E.O. 12866, sec. 3(f) (e.g., annual effect on the economy of \$100 million or more). It will not create any serious inconsistency or otherwise interference with an action taken or planned by another agency because this rule merely updates an OJJDP program rule. It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof because it merely updates the program rule to conform to existing statutory law and makes technical corrections. For the same reasons, it does not raise novel legal or policy issues. Consequently, in accordance with the general principles of Executive Order No. 12866, the Office of Management and Budget has declined review.

This final rule is not a significant regulatory action under E.O. 12866, and it does not impose a cost greater than zero.

Administrative Procedure Act

This rule issued by the Office of Justice Programs changes the regulations for the OJJDP Formula Grant Program, and thus concerns matters relating to “grants, benefits, or contracts,” 5 U.S.C. 553(a)(2). This rule is therefore exempt from the requirement of notice and comment and a 30-day delay in the effective date.

Moreover, the purpose of this final rule is (a) to remove provisions of the current regulation that are contrary to the statute upon which they purport to have been predicated when originally promulgated, or that merely parrot or repeat language in the JJDP Act or the Omnibus Crime Control and Safe Streets Act of 1968; and (b) to make technical corrections. Public comments on this final rule would have no effect on the legal necessity of removing the regulatory provisions that are contrary to statute, no effect on the legal redundancy of the parroting or repeating language, and no effect on the making of technical corrections. Finally, the rule would not adversely affect any segment of the public whatsoever, as it does not impose any burdens or requirements on any entities, including Formula Grants Program recipients, and therefore advance notice and public comment are unnecessary.

In addition, these rule amendments remove provisions of the regulation that were rendered null and void by subsequent amendments to the JJDP Act, (which repealed the predicate statutory provisions upon which the regulatory provisions were based), and “parroting” regulations that unnecessarily repeat other provisions of law, and otherwise make only technical corrections to U.S. Code citations in cross-references. Where provisions of the regulation are predicated on defunct or amended statutory provisions, it causes confusion as to the requirements that Formula Grants Program grantees must meet.

For these reasons, it is contrary to the public interest to delay implementation of this rule.

Executive Order 13132—Federalism

The Formula Grants Program does not impose any mandates on States; nor does it interfere with States’ sovereignty, authorities, or rights. States, rather, participate in the Program voluntarily and, as a condition of receipt of funding to improve their juvenile justice systems and to operate juvenile delinquency prevention programs, agree to comply with the Program’s requirements.

This rule will not have substantial direct effects on the States, on the

relationship between the federal government and the States, or on distribution of power and responsibilities among the various levels of government. The rule will not impose substantial direct compliance costs on State and local governments, or preempt any State laws. Therefore, in accordance with Executive Order No. 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained within subpart A of part 31 of title 28 of the Code of Federal Regulations.

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 \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. The Formula Grants Program provides funds to States to improve their juvenile justice systems and to support juvenile delinquency prevention programs. As a condition of funding, States agree to comply with the Formula Grants Program requirements. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule does not propose any new, or changes to existing, “collection[s] of information” as defined by the Paperwork Reduction Act of 1995 (44

U.S.C. 3501, *et seq.*) and itsimplementing regulations at 5 CFR part
1320.**Appendix A****TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31**

Regulatory provision	Reason(s) for removal or technical correction
31.1(a)	TECHNICAL CORRECTION: The text of this paragraph is simplified for clarity.
31.1(b)	TECHNICAL CORRECTION: As many current provisions that parrot regulations found outside this subpart are removed by this rule, this paragraph is added to provide notice that regulations found outside this subpart may be applicable.
31.1(c)	TECHNICAL CORRECTION: This paragraph is added to clarify that the myriad references in this subpart to provisions of Federal law outside this subpart are general (not specific) references and thus include any subsequent amendment to the provision.
31.2	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect the 2017 reorganization of title 42 of the U.S. Code into a new title 34.
31.3	OBSOLETE: The first sentence, which indicates the submission deadline for applications for years prior to 1995, is removed as obsolete.
	TECHNICAL CORRECTION: The second sentence is removed because the application deadline in any given year will depend upon the date that the solicitation is posted in that year.
31.100	REDUNDANT: This section is removed because the eligibility requirements are set forth at sections 103(7) and 221 of the Juvenile Justice and Delinquency Prevention Act (the Act) (34 U.S.C. 11103(7) and 11131).
31.101	REDUNDANT: This section is removed because it restates state agency designation requirements found at sections 223(a)(1) and (2) of the Act (34 U.S.C. 11133(a)(1) and (2)).
	OBSOLETE: The second sentence of this section was authorized by, and refers to, a section of the Act (section 299(c)) that was repealed in amendments made to the Act by Public Law 107–273 in 2002 (the 2002 amendments).
31.102	OBSOLETE: The statutory provision authorizing the Administrator to establish requirements for, and approve, the state agency designated by the governor or chief executive of the state, was repealed by Public Law 115–385 in 2018 (the 2018 amendments).
31.103	OBSOLETE: This section was made obsolete by the 2002 amendments which added section 223(e) (see 34 U.S.C. 11133(e)).
31.200	REDUNDANT: This section is removed because it references general requirements, established elsewhere, that are not specific to the Formula Grants Program and need not be included in this regulation.
31.201	REDUNDANT: This section is removed because it references several audit requirements, established elsewhere, that are not specific to the Formula Grants Program and need not be included in this regulation.
31.202(a)(1)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.505(d)).
31.202(a)(2)	TECHNICAL CORRECTION: This section is removed because the reference to “Council” is a remnant of earlier versions of the regulation, which referred to the “State Criminal Justice Council” that was required under 402(b)(1) of title I of Public Law 90–351, which section was repealed in 1984 by section 606 of title II of Public Law 98–473. Prior versions of the JJDP Act adopted that requirement by reference, but the JJDP Act was amended to remove those references. (See Pub. L. 98–473, title II, sec. 626.)
31.202(b)(1)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.204(a)).
31.202(b)(2)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.204(b)).
31.202(b)(3)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.405).
31.202(b)(4)	REDUNDANT: This paragraph is removed because its substance is covered elsewhere (see 34 U.S.C. 10230 and 2 CFR 200.337(a)).
31.202(b)(5)	REDUNDANT: This paragraph is removed as redundant because it repeats a requirement found at 28 CFR 42.204(c).
31.203	OBSOLETE: The first part of the first sentence is removed because it references a section of the Act (section 299(c)) that was repealed in the 2002 amendments.
31.300	REDUNDANT: This section is removed because it is redundant; see section 31.1 of this regulation.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.301(a)	REDUNDANT: This paragraph, regarding state funding allocations, is removed because it is redundant; see section 222 of the Act (34 U.S.C. 11132).
31.301(b)	TECHNICAL CORRECTION: In the first sentence of this paragraph, “application” is replaced with “allocation” because it is not consistent with the language in section 222 of the JJDP Act (34 U.S.C. 11132)). TECHNICAL CORRECTION: The last sentence of this paragraph is removed because it references a section of the regulation that is removed as redundant (section 31.301(b)(1)).
31.301(b)(1)	REDUNDANT: This paragraph, regarding tribal eligibility and use of funds, is removed because it is redundant; see section 223(a)(5)(C) of the Act (34 U.S.C. 11133(a)(5)(C)) and section 103(18) of the Act (34 U.S.C. 11103(18)).
31.301(b)(4)	TECHNICAL CORRECTION: This reference to paragraphs (b)(1)(i)–(iii) of this section is removed because paragraphs (b)(1)(i)–(iii) are removed as redundant.
31.301(b)(5)	REDUNDANT: This paragraph, requiring consultation with Indian tribes, is removed because it is redundant; see section 223(a)(4) of the Act (34 U.S.C. 11133(a)(4)).
31.301(c)	REDUNDANT: This paragraph, describing the match requirement, is removed because it is redundant; see section 222(c) of the Act (34 U.S.C. 11132(c)).
31.301(e)	REDUNDANT: The first sentence, describing how unallocated funds from nonparticipating states may be used by OJJDP, is removed as redundant; see section 223(d) of the Act (34 U.S.C. 11133(d)). REDUNDANT: The second sentence, regarding the allowable use of funds awarded to a recipient within a nonparticipating state, is removed as redundant; see section 223(d) of the Act (34 U.S.C. 11133(d)). ULTRA VIRES: The third sentence, allowing the reallocation of funds to states initially deemed ineligible, is removed as <i>ultra vires</i> because section 223(d) of the Act (34 U.S.C. 11133(d)) requires that funds withheld from nonparticipating states be made available to a local public or private nonprofit entity within the state. OBSOLETE: The reference to the date after which the unallocated funding from nonparticipating states will be made available to another entity within the state is obsolete because the date has passed and is no longer meaningful. OBSOLETE: This reference to publication of program announcements in the Federal Register is removed as obsolete because program announcements (i.e., solicitations) are no longer published in the Federal Register .
31.302(a)	REDUNDANT: This paragraph, regarding the designation of the state agency responsible for administration of the Formula Grants Program, is redundant; see sections 223(a)(1) and (2) of the Act (34 U.S.C. 11133(a)(1) and (2)). OBSOLETE: This paragraph also refers to a section of the Act (section 299(c)) that was repealed in the 2002 amendments.
31.302(b)(1)	REDUNDANT: The first sentence, describing the state advisory group and membership requirements, is redundant; see section 223(a)(3) of the Act (34 U.S.C. 11133(a)(3)).
31.302(b)(2)	OBSOLETE: Section 223(a)(3)(A) and (B) of the Act (34 U.S.C. 11133(a)(3)(A) and (B)) prescribe membership requirements for the state advisory groups (SAGs). This paragraph simply makes <i>recommendations</i> for SAG membership based on a statutory provision that was repealed in the 2002 amendments.
31.302(c)	REDUNDANT: This paragraph is removed because it simply provides that states must comply with cited sections of the Act that, of their own force, require compliance by formula grant recipients.
31.303(a)	REDUNDANT: This paragraph is removed because all Office of Justice Programs (OJP) grant recipients are subject to a requirement, established elsewhere, that they submit assurances that they have complied with applicable statutory, regulatory, and other program requirements when they submit their application, and thus need not be included in this regulation.
31.303(b)	OBSOLETE: This paragraph simply makes a <i>recommendation</i> for the use of formula grant funds based on a finding that was deleted in the 2002 amendments and a statutory provision that does not specifically describe efforts to address serious and violent offenders in the permissible programs delineated in section 223(a)(9) of the Act (34 U.S.C. 11133(a)(9)).

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(c)	TECHNICAL CORRECTION: The statutory citation referenced in the paragraph is updated to reflect renumbering in the 2002 and 2018 amendments.
31.303(c)(1)	TECHNICAL CORRECTION: This citation is amended to conform to proper Code of Federal Regulations citation form.
31.303(c)(4)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 and 2018 amendments.
31.303(c)(5)	OBSOLETE: This paragraph is removed as obsolete because it references a report required by a provision in the Act (section 223(a)(12)(B)) that was repealed by the 2002 amendments.
31.303(d)	TECHNICAL CORRECTION: The term “contact,” for the purposes of the separation requirement, is replaced with “sight or sound contact” each place it appears in this paragraph, to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2018 amendments.
31.303(d)(1)	TECHNICAL CORRECTION: The term “incarcerated adults” is replaced with “adult inmates” each place it appears in this paragraph, to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2002 amendments.
31.303(d)(1)(i)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is changed to reflect that the separation provision is found in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)).
31.303(d)(1)(i)	TECHNICAL CORRECTION: The term “juvenile offenders” is not consistent with the separation requirement in section 223(a)(12) and is replaced with the word “juveniles” each place it appears in this paragraph.
31.303(d)(2)	OBSOLETE: The term “contact,” for the purposes of the separation requirement, has been replaced with the term “sight or sound contact” by the 2018 amendments, at 34 U.S.C. 11133(a)(12), and the definition of “contact” has been replaced with a definition of “sight or sound contact” at 34 U.S.C. 11103(25).
31.303(d)(2)	OBSOLETE: The term “contact,” defined in this regulatory provision, was replaced with the term “sight or sound contact” by the 2018 amendments at 34 U.S.C. 11133(a)(12). “Sight or sound contact” is defined at 34 U.S.C. 11103(25), and expressly excludes contact that is “brief and inadvertent,” but not contact that is “accidental.”
31.303(d)(2)	TECHNICAL CORRECTION: The separation requirement prohibits sight or sound contact between “juveniles alleged to be or found to be delinquent or those within the purview of [34 U.S.C. 11133(a)(11)]” and adult inmates.
31.303(d)(2)	OBSOLETE: This provision is removed as obsolete because it required immediate implementation at the time this regulation was promulgated in 1996 and thus is no longer meaningful.
31.303(e)(1)	OBSOLETE: The reference to the date after which states must describe their plan, procedure, and timetable for complying with the jail removal requirement is deleted because it has passed and is no longer meaningful.
31.303(e)(2)	OBSOLETE: The second sentence is deleted because it refers to section 31.303(f)(4) of this regulation, which is removed.
31.303(e)(2)	REDUNDANT: The second sentence is removed because section 223(a)(13) of the Act (34 U.S.C. 11133(a)(13)) sets forth the exceptions to the jail removal requirement.
31.303(e)(3)(i)	TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in colocated facilities, is removed.
31.303(e)(3)(i)(A)	TECHNICAL CORRECTION: The reference to (e)(3)(i)(C)(3) is deleted because that subparagraph is removed.
31.303(e)(3)(i)(B)	TECHNICAL CORRECTION: The reference to “four” criteria is deleted, because (e)(3)(i)(C)(3) is removed and there are now only three criteria.
31.303(e)(3)(i)(C)	TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in colocated facilities, is removed.
31.303(e)(3)(i)(C)	TECHNICAL CORRECTION: The reference to “four” criteria is deleted, because (e)(3)(i)(C)(3) is removed and there are now only three criteria.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(e)(3)(i)(C)(1) and (2)	TECHNICAL CORRECTION: The terms “adults” and “incarcerated adults” are replaced with “adult inmates” each place they appear in subparagraphs (C)(1) and (2) to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2002 amendments.
31.303(e)(3)(i)(C)(3)	OBSOLETE: This provision is removed as obsolete because it is based on a statutory provision within the separation requirement (requiring separate staff) that was repealed by the 2002 amendments.
31.303(e)(3)(ii)	TECHNICAL CORRECTION: The reference to “four” criteria is deleted, because (e)(3)(i)(C)(3) is removed and there are now only three criteria. Two words are added for clarity. TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in colocated facilities, is removed.
31.303(e)(3)(iii)	OBSOLETE: This provision is removed as obsolete because it is based on a statutory provision within the separation requirement (requiring separate staff) that was repealed by the 2002 amendments.
31.303(e)(3)(iv)	TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in colocated facilities, is removed.
31.303(e)(4)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)(i)(A)	ULTRA VIRES: The word “residential” is deleted because, section 223(a)(14) of the Act (34 U.S.C. 11133 (a)(14)) requires that States monitor all “jails, lock-ups, detention facilities, and correctional facilities,” and, plainly, is not limited in scope to “residential” facilities. Accordingly, the language in this paragraph that purports to limit the reach of the statutory requirement is <i>ultra vires</i> .
31.303(f)(1)(i)(B)	OBSOLETE: In this paragraph the words “or nonsecure” are deleted because the requirement at section 223(a)(14) (34 U.S.C. 11133(a)(14)) that states monitor nonsecure facilities was repealed by the 2018 amendments.
31.303(f)(1)(i)(C)(2)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)(i)(D)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments. TECHNICAL CORRECTION: The second clause in the second sentence is deleted because the reporting period was changed to 12 months in the 2017 amendments to the regulation, at section 31.303(f)(5).
31.303(f)(1)(ii)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)(iii)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(2)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(3)(i)	TECHNICAL CORRECTION: The term “juvenile” is replaced with “status offender” in each place that it appears in this paragraph to reflect a change in section 223(a)(23) of the Act (34 U.S.C. 11133(a)(23)), made by the 2018 amendments.
31.303(f)(3)(iii)	REDUNDANT: This paragraph, describing a requirement related to the valid court order exception, is removed because it is redundant; see section 31.303(f)(3)(v).
31.303(f)(3)(iv)	OBSOLETE: This paragraph, describing requirements that must be met in order to use the valid court order (VCO) exception, is removed as obsolete because the VCO requirements are set forth in section 223(a)(23) of the Act, as amended in 2002.
31.303(f)(3)(v)(A)	TECHNICAL CORRECTION: The term “juvenile” is replaced with “status offender” to reflect a change in section 223(a)(23) of the Act (34 U.S.C. 11133(a)(23)), made by the 2018 amendments.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(f)(3)(vi)	OBSOLETE: This paragraph, describing requirements that must be met in order to use the valid court order (VCO) exception, is removed as obsolete because the VCO requirements are set forth in section 223(a)(23) of the Act, as amended in 2002.
31.303(f)(3)(vii)	ULTRA VIRES: This paragraph is <i>ultra vires</i> because a juvenile who has violated a valid court order is not a non-offender and therefore the provisions of section 223(a)(11)(A)(ii) of the Act (relating to non-offenders) do not apply to such a juvenile.
31.303(f)(4)	OBSOLETE: This paragraph is removed as obsolete because the jail removal requirement in section 223(a)(13) of the Act (34 U.S.C. 11133(a)(13)) was amended in 2002 to provide exceptions to the requirement.
31.303(f)(5)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect the 2017 reorganization of title 42 of the U.S. Code into a new title 34.
31.303(f)(5)(i)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(i)(D)	TECHNICAL CORRECTION: The word “Title” has been changed to lower case to match the formatting in the rest of the part.
31.303(f)(5)(ii)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(iii)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(iv)	TECHNICAL CORRECTION: The term “criminal offenders” is replaced with “inmates” each place it appears in this paragraph to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2002 amendments.
31.303(f)(5)(iv)(F)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(iv)(J)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(5)(iv)(K)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(5)(iv)(L)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(5)(iv)(M)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(6)(i)	OBSOLETE: The numerical standard used to determine states’ compliance with the DSO, separation, and jail removal requirements, based on their 2016 compliance data, is no longer meaningful.
31.303(f)(6)(ii)	OBSOLETE: The numerical standard used to determine states’ compliance with the DSO, separation, and jail removal requirements, based on their 2017 compliance data, is no longer meaningful.
31.303(f)(6)(iii)	OBSOLETE: The numerical standard used to determine states’ compliance with the DSO, separation, and jail removal requirements, based on their 2018 data, is no longer meaningful. With the removal of the reference to “FY 2018,” the phrase “and subsequent years” is no longer necessary.
31.303(f)(7)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments, and the word “Act” is added after “JJDP” to match the phrasing in the rest of the part.
31.303(f)(7)(i)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(7)(ii)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments, and the word “Sections” is changed to lowercase to match the formatting in the rest of the part.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(g)	REDUNDANT: This provision is removed as redundant because section 223(a)(7) of the Act sets forth the requirements of the juvenile crime analysis.
31.303(h)	TECHNICAL CORRECTION: The citation to section 223(a) is deleted because the correct reference to the statutory provision requiring the annual performance report is provided immediately following this deleted text. Additionally, the correct reference is to a statutory provision that was renumbered by the 2002 amendments. TECHNICAL CORRECTION: The correct citation to the juvenile crime analysis requirement is found at section 223(a)(7) of the Act (34 U.S.C. 11133(a)(7)).
31.303(j)	OBSOLETE: This provision is removed because the disproportionate minority <i>confinement</i> provision was repealed and replaced with section 223(a)(22) of the Act (the disproportionate minority <i>contact</i> provision) (34 U.S.C. 11133(a)(22)) by the 2002 amendments, which in turn, was repealed by the 2018 amendments and replaced with the requirement to reduce racial and ethnic disparities in section 233(a)(15) of the Act (34 U.S.C. 11133(a)(15)).
31.303(k)	OBSOLETE: This provision is removed as obsolete because the statutory basis for the provision was repealed by the 2002 amendments.
31.304	REDUNDANT: Four definitions have been deleted (section 31.304(h), (m), (n), and (o)) as redundant, because definitions for these terms are provided in the Act. TECHNICAL CORRECTION: The remaining definitions have been rearranged in alphabetical order.
31.304(h)	REDUNDANT: The term “status offender” is defined in section 103(42) of the Act (34 U.S.C. 11103(42)).
31.304(m)	REDUNDANT: The term “jail or lockup for adults” is defined in section 103(22) of the Act (34 U.S.C. 11103(22)).
31.304(n)	REDUNDANT: The term “jail or lockup for adults” is defined in section 103(22) of the Act (34 U.S.C. 11103(22)).
31.304(o)	REDUNDANT: The term “valid court order” is defined in section 103(16) of the Act (34 U.S.C. 11103(16)).
31.400	REDUNDANT: This section is removed as redundant because it merely references general requirements, established elsewhere, with which states must comply (without citation to those requirements). When accepting a grant award, states must provide assurances that they will comply with all statutory, regulatory, and other applicable requirements.
31.401	REDUNDANT: This section is removed as redundant because it merely references general requirements, established elsewhere, with which states must comply (without citation to those requirements). When accepting a grant award, states must provide assurances that they will comply with all statutory, regulatory, and other applicable requirements.
31.403	REDUNDANT: This section is removed because it references general requirements, established elsewhere, that are not specific to the Formula Grants Program and need not be included in this regulation.
31.404	REDUNDANT: This section merely references a requirement prescribed in 28 CFR part 38.

List of Subjects in 28 CFR Part 31

Administrative practice and procedure, juvenile delinquency prevention, juvenile justice, Formula Grants Program, Juvenile Justice and Delinquency Prevention Act (JJDP Act).

Accordingly, for the reasons set forth in the preamble, part 31 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

■ 1. The general authority citation for part 31 continues to read as follows:

Authority: 42 U.S.C 5611(b); 42 U.S.C. 5631–5633.

■ 2. Subpart A is revised to read as follows:

Subpart A—Formula Grants**General Provisions**

Sec.

31.1 General.

31.2 Statutory authority.

31.3 [Reserved]

Eligible Applicants

31.100 [Reserved]

31.101 [Reserved]

31.102 [Reserved]

31.103 [Reserved]

General Requirements

31.200 [Reserved]

31.201 [Reserved]

31.202 [Reserved]

31.203 Open meetings and public access to records.

Juvenile Justice Act Requirements

31.300 [Reserved]

31.301 Funding.

31.302 Applicant State agency.

31.303 Substantive requirements.

31.304 Definitions.

General Conditions and Assurances

31.400 [Reserved]

31.401 [Reserved]

31.402 Application on file.

31.403 [Reserved]

31.404 [Reserved]

Authority: 34 U.S.C. 11111(b); 34 U.S.C. 11131.

Subpart A—Formula Grants**General Provisions****§ 31.1 General.**

(a) This implements subpart I of part B of the Juvenile Justice and Delinquency Prevention Act of 1974, which authorizes a formula grant program.

(b) In addition to this subpart, other rules or regulations may be applicable to the formula grant program described in paragraph (a) of this section; see, *e.g.*, 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted by the Department of Justice through 2 CFR part 2800 or other applicable regulation; and 28 CFR part 42 (Nondiscrimination in Federally Assisted Programs—Implementation of title VI of the Civil Rights Act of 1964).

(c) Unless expressly provided otherwise, any reference in this subpart to any provision of Federal law not in this subpart shall be understood to constitute a general reference and thus to include any subsequent amendments to the provision.

§ 31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (34 U.S.C. 11101 *et seq.*)

§ 31.3 [Reserved]**Eligible Applicants****§ 31.100 [Reserved]****§ 31.101 [Reserved]****§ 31.102 [Reserved]****§ 31.103 [Reserved]****General Requirements****§ 31.200 [Reserved]****§ 31.201 [Reserved]****§ 31.202 [Reserved]****§ 31.203 Open meetings and public access to records.**

The State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

Juvenile Justice Act Requirements**§ 31.300 [Reserved]****§ 31.301 Funding.**

(a) [Reserved]

(b) *Funds for local use.* At least two-thirds of the formula grant allocation to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where the tribes perform law enforcement functions.

(1) [Reserved]

(2) [Reserved]

(3) To carry out this requirement, OJJDP will annually provide each state with the most recent Bureau of Census statistics on the number of persons under age 18 living within the state, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s). Where the relative number of persons under age 18 within a geographic area where an Indian tribe performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) *Nonparticipating States.* Formula grant funds allocated to a State which has failed to submit an application, plan, or monitoring data establishing its eligibility for the funds will be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements.

§ 31.302 Applicant State agency.

(a) [Reserved]

(b) *Advisory group.* Pursuant to section 223(a)(3) of the JJDP Act, the State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(c) [Reserved]

§ 31.303 Substantive requirements.

(a) [Reserved]

(b) [Reserved]

(c) *Deinstitutionalization of status offenders and non-offenders (DSO).* Pursuant to section 223(a) (11) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to paragraph (f)(3) of this section for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) Apply this requirement to alien juveniles under Federal jurisdiction who are held in State or local facilities.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(11) may, in lieu of addressing paragraphs (c)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) [Reserved]

(d) *Separation.* (1) Pursuant to section 223(a)(12) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent sight or sound contact between juveniles alleged to be or found to be delinquent or those within the purview of 34 U.S.C. 11133(a)(11)(A) and adult inmates in secure areas of a facility that are not dedicated to use by juveniles and which are nonresidential, which may include dining, recreational, educational, vocational, health care, sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile area,

including any residential area of a secure facility, between juveniles in a secure custody status and adult inmates would be a reportable violation.

(ii) In those instances where accused juvenile criminal-type offenders are authorized to be temporarily detained in facilities where adults are confined, the State must set forth the procedures for assuring no sight or sound contact between such juveniles and adult inmates.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal type offenders, status offenders and non-offenders from adult inmates in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(12) may, in lieu of addressing paragraphs (d)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority, or a transfer within a mixed juvenile and adult facility for placement with adult criminals, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

(2) [Reserved]

(e) *Removal of juveniles from adult jails and lockups.* Pursuant to section 223(a)(13) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met.

(2) Describe the barriers that a State faces in removing all juveniles from adult jails and lockups, except as provided in section 223(a)(13).

(3)(i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the detention of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with criteria established in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer).

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the criteria set forth in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section for the purpose of monitoring compliance with section 223(a)(12)(A), (13) and (14) of the JJDP Act.

(C) Each of the following criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(1) Separation between juveniles and adult inmates such that there could be no sustained sight or sound contact between juveniles and adult inmates in the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and

(2) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and adult inmates. Time-phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(3) [Reserved.]

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the

same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

(ii) The State must determine that all of the criteria are fully met. It is incumbent upon the State to make the determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the criteria set forth in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section.

(iii) [Reserved]

(iv) An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section is being maintained.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(13) may, in lieu of addressing paragraphs (e)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of jails, detention facilities and correctional facilities.* (1) *Elements of a compliance monitoring system.* Pursuant to section 223(a)(14) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, and correctional facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of monitoring universe:* This refers to the identification of all facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the monitoring universe*: This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure facility.

(C) *Inspection of facilities*: Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include:

(1) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and

(2) A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a)(11), (12) and/or (13).

(D) *Data collection and data verification*: This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a)(11), (12) and/or (13). The length of the reporting period should be 12 months of data. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a)(11), (12), and (13) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a)(11), (12), and (13). This should include both legislative and administrative procedures and sanctions.

(2) *Monitoring for compliance with DSO*. For the purpose of monitoring for compliance with section 223(a)(11)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours,

exclusive of weekends and holidays, following an initial court appearance.

(3) *Valid court order*. For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions (in addition to the requirements set out in section 223(a)(23) of the Act) must be satisfied prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) [Reserved]

(iv) [Reserved]

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) [Reserved]

(4) [Reserved]

(5) *Reporting requirement*. The State shall report annually to the Administrator of OJJDP on the results of monitoring for the core requirements in the JJDP Act at 34 U.S.C. 11133(a)(11), (12), and (13). The reporting period should provide 12 months of data for each federal fiscal year, for 85% of facilities within the State that are required to report compliance data, and States must extrapolate and report, in a statistically valid manner, data for the remaining 15% of facilities. The report shall be submitted to the Administrator of OJJDP by February 28 of each year, except that the Administrator may grant an extension of the reporting deadline to March 31st, for good cause, upon request by a State.

(i) To demonstrate the extent of compliance with section 223(a)(11)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) Total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected on-site;

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this statute, or a similar state law, is excepted from the deinstitutionalization of status offenders requirement;

(D) The total number of accused status offenders (including valid court order violators, out of state runaways, and Federal wards, but excluding title 18 922(x) violators) and nonoffenders detained in any adult jail, lockup, or nonapproved collocated facility for any length of time;

(E) The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the valid court order provision or pursuant to title 18 U.S.C. 922(x);

(F) The total number of status offenders held in any secure detention or correctional facility pursuant to the valid court order provision set forth in paragraph (f)(3) of this section; and

(G) The total number of juvenile offenders held pursuant to title 18 U.S.C. 922(x).

(ii) To demonstrate the extent to which the provisions of section 223(a)(11)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and nonoffenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive

appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the extent of compliance with section 223(a)(12) of the JJDP Act, the report must include, at

a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult inmates during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for detention and confinement of both juvenile offenders and adult inmates which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult inmates in facilities used for the detention and confinement of both juveniles and adults;

(E) The total number of State approved juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup, including a list of such facilities;

(F) The total number of juveniles detained in State approved collocated facilities that were not separated from the management, security or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been approved by the State, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State that were not sight and sound separated from adult inmates.

(iv) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders detained in adult jails, lockups, and unapproved collocated facilities in excess of six hours, including those held pursuant to the "removal exception" as set forth in 34 U.S.C. 11133(a)(13)(B);

(G) The total number of accused juvenile criminal-type offenders

detained in adult jails, lockups and unapproved collocated facilities for less than six hours for purposes other than identification, investigations, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders detained in adult jails or lockups and unapproved collocated facilities in excess of six hours prior to or following a court appearance or for any length of time not related to a court appearance;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders detained in adult jails, lockups and unapproved collocated facilities for any length of time;

(J) The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the "removal exception" as noted in 34 U.S.C. 11133(a)(13)(B), including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as set forth in 34 U.S.C. 11133(a)(13)(B);

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 48 hours, in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as noted in 34 U.S.C. 11133(a)(13)(B), due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities, in areas meeting the "removal exception" as noted in 34 U.S.C. 11133(a)(13)(B).

(6) *Compliance.* The State must demonstrate the extent to which the requirements of sections 223(a)(11), (12), and (13) of the Act are met.

(i) [Reserved]

(ii) [Reserved]

(iii) In determining the compliance standards to be applied to States' compliance monitoring data, the Administrator shall take the average of the States' compliance monitoring data from not less than two years prior to the compliance reporting period with respect to which the compliance determination will be made (removing,

when applicable, one negative outlier in each data collection period for DSO, separation, and jail removal) and apply a standard deviation of not less than one to establish the compliance standards to be applied, except that the Administrator may make adjustments to the methodology described in this paragraph as he deems necessary and shall post the compliance standards on OJJDP's website by August 31st of each year.

(7) *Monitoring report exemption.*

States which have been determined by the OJJDP Administrator to have achieved full compliance with sections 223(a)(11)(A), (a)(13), and compliance with section 223(a)(12) of the JJDP Act and wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an effective system of monitoring jails, law enforcement lockup, detention facilities, to enable an annual determination of State compliance with sections 223(a)(11)(A), (12), and (13) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of sections 223(a)(11)(A), (12), and (13) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

(g) [Reserved]

(h) *Annual performance report.*

Pursuant to section 223(a)(22)(B), the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(7). The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which

information is available, regardless of which year's formula grant funds were used to support the activities being reported on, *e.g.*, during a reporting period, activities may have been funded from two or more formula grant awards.

(i) *Technical assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all technical assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDP.".

(j) [Reserved]

(k) [Reserved]

§ 31.304 Definitions.

(a) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(b) *Detain or confine* means to hold, keep, or restrain a person such that he is not free to leave, or such that a reasonable person would believe that he is not free to leave, except that a juvenile held by law enforcement solely for the purpose of returning him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency is not detained or confined within the meaning of this definition.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations by defined as State law, *i.e.*, a criminal-type offender or a status offender.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, *i.e.*, a criminal-type offender or a status offender.

(f) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, *i.e.*, a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(g) *Lawful custody.* The exercise of care, supervision and control over a

juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(h) *Local private agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(k) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in court exercising criminal jurisdiction.

(l) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

(m) *Secure.* As used to define a detention or correctional facility this term includes residential facilities which include construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

General Conditions and Assurances

§ 31.400 [Reserved]

§ 31.401 [Reserved]

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in

accordance with the programs contained in the applicant State's current approved application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administrator of OJJDP.

§ 31.403 [Reserved]

§ 31.404 [Reserved]

Dated: May 12, 2021.

Maureen A. Henneberg,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2021-10435 Filed 6-10-21; 8:45 am]

BILLING CODE 4410-18-P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2204

Rules Implementing the Equal Access to Justice Act; Correction

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Correcting amendment.

SUMMARY: This document corrects the final rule published by the Occupational Safety and Health Review Commission in the **Federal Register** on May 17, 2021. That rule revised the Occupational Safety and Health Review Commission's rules implementing the Equal Access to Justice Act.

DATES: Effective June 11, 2021

FOR FURTHER INFORMATION CONTACT:

Carter Tellinghuisen, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606-5410 ext. 211, by email at ctellinghuisen@oshrc.gov, or by mail at 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

SUPPLEMENTARY INFORMATION: OSHRC

published revisions to its rules implementing the Equal Access to Justice Act on May 17, 2021 (86 FR 26658). This document makes a correction to the final rule.

List of Subjects in 29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

Accordingly, 29 CFR part 2204 is amended by making the following correcting amendments:

PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

■ 1. The authority citation for part 2204 continues to read as follows:

Authority: 5 U.S.C. 504.

■ 2. In § 2204.302, revise paragraph (a) to read as follows:

§ 2204.302 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization, cooperative association, or, in the case of an application for an award related to an allegedly excessive demand by the Secretary, a small entity as that term is defined by 5 U.S.C. 601(6), shall provide with its application a detailed exhibit showing the net worth of the applicant as required by § 2204.301(c) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies as a party as defined in § 2204.201. The judge or Commission may require an applicant to file additional information to determine its eligibility for an award.

* * * * *

Cynthia L. Attwood,
Chairman.

Amanda Wood Laihow,
Commissioner.

[FR Doc. 2021-11906 Filed 6-10-21; 8:45 am]

BILLING CODE 7600-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0785]

RIN 1625-AA11

Regulated Navigation Areas; Harbor Entrances Along the Coast of Northern California

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

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Regulated Navigation Area (RNA) at the harbor bar entrance to Crescent City Harbor. This document will update inapplicable coordinates of the area and replace with updated coordinates.

DATES: This rule is effective July 12, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0785 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 about this rulemaking, call or email Lieutenant Marcia Medina, Coast Guard District 11 Waterways Office; telephone 510-437-2978, email Marcia.A.Medina@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
RNA Regulated Navigation Area
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On July 17, 2020, the Coast Guard published a final rule titled “Regulated Navigation Area: Harbor Entrances Along the Coast of Northern California” at 85 FR 43437 that added 33 CFR 165.1196. That rule established a RNA at the harbor entrance of Crescent City, California. Since publishing the previous rule, the Eleventh Coast Guard District was contacted by the National Oceanographic and Atmospheric Administration (NOAA) Marine Chart Division, part of the Nautical Data Branch of the Office of Coast Survey of the National Ocean Service. The NOAA Marine Chart Division brought to the Coast Guard's attention that the geographic coordinates for the RNA at the harbor entrance of Crescent City appeared to incorrectly capture the entirety of the harbor entrance. The Coast Guard agreed, and worked with the NOAA Marine Chart Division to develop new coordinates that properly capture the entirety of the harbor entrance of Crescent City. On November 30, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Regulated Navigation Areas; Harbor Entrances Along the Coast of Northern California” (85 FR 76502). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the update of the geographic coordinates of the harbor entrance of Crescent City. During the comment period that ended December 30, 2020, we received no comments.

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 Commander of the Eleventh Coast Guard District has determined that there is a need to amend the Regulated Navigation Area: Harbor Entrances along the Coast of Northern California at 33 CFR 165.1196 to update the geographic coordinates of the harbor entrance to Crescent City.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received no comments on our NPRM published on November 30, 2020.

This rule corrects the geographic coordinates listed in the RNA of the harbor entrance to Crescent City. The updated coordinates do not materially affect the size or the general geographic location of the RNA. Instead, the updated coordinates correct an issue raised by the NOAA Marine Chart Division. Specifically, the updated coordinates fully and properly capture the entirety of the harbor entrance to Crescent City.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited economic impact of this rule's amendment. The final rule will merely update geographic coordinates. It has no bearing on the impact or the effective period of the current RNA.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations

that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit through the RNA in the area represented by the updated coordinates at the harbor entrance of Crescent City may be small entities, for the reasons states 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 RNA that will prohibit the transit of maritime traffic in times of unsafe conditions. It is categorically excluded from further review under paragraph L60[a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.1196 by revising paragraph (a)(3) to read as follows:

§ 165.1196 Regulated Navigation Areas; Harbor Entrances along the Coast of Northern California.

(a) * * *

(3) Crescent City Harbor Entrance Channel: The navigable waters of the Crescent City Harbor Entrance Channel enclosed by the following coordinates:

(i) 41°43'50" N, 124°11'27" W (Point A)

(ii) 41°44'12" N, 124°11'42" W (Point B)

(iii) 41°44'26" N, 124°10'55" W (Point C)

(iv) 41°44'13" N, 124°10'20" W (Point D); and

(v) Thence back to Point A, in Crescent City, CA (NAD 83).

* * * * *

Dated: April 19, 2021.

Brian K. Penoyer,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard District Eleven.

[FR Doc. 2021–12300 Filed 6–10–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0399]

RIN 1625–AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters in the Potomac River. This action is necessary to provide for the safety of persons, property, and the

marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge, which will occur from 7 a.m. on June 14, 2021, through 9 p.m. on June 19, 2021. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 7 a.m. on June 14, 2021, through 9 p.m. on June 19, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0399 in the “SEARCH” box and click “SEARCH.” Click on DOCUMENTS on the line associated with this rule below “SEARCH”.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On June 3, 2021, Skanska-Corman-McLean, Joint Venture, notified the Coast Guard that from 7 a.m. on June 14, 2021, to 9 p.m. on June 19, 2021, it will be setting the tub sections at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge at Pier 43, which is adjacent and to the west of the federal navigation channel. The operation requires using two large crane barges and other marine equipment positioned within the federal navigation channel. This operation will impede vessels requiring the use of the channel.

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 construction operations, involving simultaneous crane heavy lifts, at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge must occur within the federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. Hazards from the construction operations include low-hanging or falling ropes, cables, large piles and cement cast portions, dangerous projectiles, and or other debris. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by June 14, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge conducted within the federal navigation channel.

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 COTP Maryland-National Capital Region has determined that potential hazards associated with bridge construction starting June 7, 2021, will be a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on June 14, 2021, through 9 p.m. on June 19, 2021. The safety zone will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′50.5″ N, 076°59′25.6″ W, thence south to 38°21′42.6″ N, 076°59′23.8″ W, thence west to 38°21′41.0″ N, 076°59′34.9″ W, thence north to 38°21′48.9″ N, 076°59′36.8″ W, and east back to the beginning point,

located between Charles County, MD and King George County, VA. The regulated area is approximately 300 yards in width and 270 yards in length.

This regulation requires that the bridge owner post a sign facing the northern and southern approaches of the navigation channel labeled “BRIDGE WORK—DANGER—STAY AWAY” affixed to the sides of the on-scene marine equipment and vessels operating within the area of the safety zone. This provides on-scene notice of the safety zone. This notice will consist of a diamond shaped sign (minimum 4 feet by 4 feet) with a 3-inch orange retro reflective border. The word “DANGER” will be 10 inch black block letters centered on the sign with the words “BRIDGE WORK” and “STAY AWAY” in 6 inch black block letters placed above and below the word “DANGER,” respectively, on a white background.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the tub sections are being set at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge at Pier 43, which is adjacent and to the west of the federal navigation channel. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size and duration of the safety zone. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east of the federal navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east. This safety zone will impact a small designated area of the Potomac River for approximately 110 hours, but coincides with the non-peak season for recreational boating.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–

888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety

zone lasting only 110 total hours that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T05–0399 to read as follows:

§ 165.T05–0399 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′50.5″ N, 076°59′25.6″ W, thence south to 38°21′42.6″ N, 076°59′23.8″ W, thence west to 38°21′41.0″ N, 076°59′34.9″ W, thence north to 38°21′48.9″ N, 076°59′36.8″ W, and east back to the beginning point, located between Charles County, MD and King George County, VA. These coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or

petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *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 number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). 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.

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

(e) *Enforcement.* This safety zone will be enforced during the period described in paragraph (f) of this section. A "BRIDGE WORK—DANGER—STAY AWAY" sign facing the northern and southern approaches of the navigation channel will be posted on the sides of the marine equipment on-scene within the location described in paragraph (a) of this section.

(f) *Enforcement period.* This section will be enforced from 7 a.m. on June 14, 2021, through 9 p.m. on June 19, 2021.

Dated: June 8, 2021.

Mathew S. Fine,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Maryland-NCR.

[FR Doc. 2021-12340 Filed 6-10-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0132]

RIN 1625-AA00

Safety Zone; Cape May, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety

zone on the waters of Cape May Harbor, Cape May Inlet, Atlantic Ocean, Delaware Bay, and Cape May Canal located in Cape May, NJ. This action is necessary to protect the surrounding public and vessels on these navigable waters during a paddleboat event. This regulation prohibits persons and vessels from entering, transiting, or remaining within the safety zone unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective from 8:30 a.m. to 1 p.m. on June 27, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0132 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the event. The rule must be in force by June 27, 2021. We are taking immediate action to ensure the safety of spectators and the general public from hazards associated with the paddleboat event.

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 mitigate the potential safety hazards associated with a paddleboat event in this location.

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 Delaware Bay (COTP) has determined that potential hazards associated with a paddleboat event will be a safety concern for anyone within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and at all times, extend 100 yards on either side of the safety vessels and participants. This rule is needed to protect personnel, vessels, and the public within the safety zone during the paddleboat event.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone on the waters of Cape May Harbor, Cape May Inlet, Atlantic Ocean, Delaware Bay, and Cape May Canal located in Cape May, NJ, during a paddleboat event. The rule will be enforced from 8:30 a.m. to 1 p.m. on June 27, 2021. The moving safety zone will encompass all waters within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels and participants. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Delaware Bay or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the safety zone by Broadcast Notice to Mariners and by on-scene actual notice from designated representatives. The regulatory text we are proposing appears at the end of this document.

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 following considerations: (1) The moving safety zone would move at the pace of event patrol vessels and participants, thus only impacting certain waters of Cape May Harbor, Cape May Inlet, Atlantic Ocean, Delaware Bay, and Cape May Canal for a limited time allowing for transiting vessels to adjust; and (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; and (3) the Coast Guard will provide advance notification of the moving safety zone to the local maritime community by Broadcast Notice to Mariners, or by on-scene actual notice from designated representatives.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the 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 moving safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable waters of Cape May Harbor, Cape May Inlet, Atlantic Ocean, Delaware Bay, and Cape May Canal located in Cape May, NJ, during a paddleboat event. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protestors. 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.T05–0132 to read as follows:

§ 165.T05–0132 Safety Zone; Cape May, NJ.

(a) *Location.* The following area is a moving safety zone: All waters within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and 100 yards on either side of participant and safety vessels during the 2021 DeSatnick Foundation Cape to Cape Paddleboat event. The safety zone will move with the safety vessels and participants as they transit the waters east through Cape May Harbor, south through Cape May Inlet, west through the Atlantic Ocean, north through the Delaware Bay, then east through Cape May Canal, and terminate at the Lost Fishermen's Memorial in Cape May Harbor. The safety zone will move at the pace of event patrol vessels and participants.

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

(c) *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 or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. 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.

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

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

(e) *Enforcement period.* This rule will be enforced from 8:30 a.m. to 1 p.m. on June 27, 2021.

Dated: June 4, 2021.

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

[FR Doc. 2021–12337 Filed 6–10–21; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 351

[Docket No. 21–CRB–0007–RM]

Copyright Royalty Board Regulations Regarding the Conduct of Proceedings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are amending regulations to clarify that their hearings may be conducted in person at the Library of Congress or an alternative location, or virtually, at the Judges' discretion.

DATES: Effective June 11, 2021.

ADDRESSES: Docket: For access to the docket to read background documents or comments received, go to eCRB at <https://app.crb.gov> and perform a case search for docket 21–CRB–0007–RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, at 202–707–7658 or crb@loc.gov.

SUPPLEMENTARY INFORMATION: On February 26, 2021, the Copyright Royalty Judges (Judges) published a notice of proposed rulemaking (notice) in the **Federal Register** seeking comments on a proposed rule to codify the fact that future hearings may be conducted physically, either at the Library of Congress or an alternative location, or virtually, at the Judges' discretion. 86 FR 1163 (Feb. 26, 2021). The Judges received one comment, from SoundExchange, a regular participant in Copyright Royalty Board proceedings, in favor of the proposed rule.

SoundExchange cites to past hearings that the Judges conducted, in coordination and consultation with the participants, in alternate locations and virtually. It also anticipates the possibility that virtual hearings could make sense in the future, and notes that the proposed rule provides flexibility regarding the virtual platform. Therefore, for the reasons indicated in the February 26, 2021 notice, the Judges adopt the proposed changes to part 351, as detailed in this final rule.

List of Subjects in 37 CFR Part 351

Administrative practice and procedure, Copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR 351 as follows:

PART 351—PROCEEDINGS

■ 1. The authority citation for part 351 continues to read:

Authority: 17 U.S.C. 803.

■ 2. Revise § 351.9(a) to read as follows:

§ 351.9 Conduct of hearings.

(a)(1) *By panels.* Subject to paragraph (b) of this section, hearings will be conducted by Copyright Royalty Judges sitting *en banc*.

(2) *Location.* Hearings will be conducted in person at the Library of Congress or an alternative location, or virtually, at the Judges' discretion.

* * * * *

Dated: May 17, 2021.

Jesse M. Feder,
Chief Copyright Royalty Judge.

Approved by:
Carla D. Hayden,
Librarian of Congress.

[FR Doc. 2021–12312 Filed 6–10–21; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1 and 124

[EPA–HQ–OGC–2019–0406; FRL–10024–73–OA]

RIN 2090–AA41

Revisions to the Permit Appeals Process To Restore the Organization and Function of the Environmental Appeals Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is reversing recent changes to the organization and function of the Environmental Appeals Board (EAB) that altered the appeals process and procedures for Agency decisions that the EAB considers. In addition, the Administrator reaffirms that the Board is intended to function as an impartial body that is independent of all EPA components, except the immediate Office of the Administrator, and reaffirms the EAB's ability to carry

out the Administrator's delegated authority to adjudicate disputes and issue final Agency decisions.

DATES: This final rule is effective on June 11, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OGC-2019-0406. 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 electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ammie Roseman-Orr, Environmental Appeals Board (EAB), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Mail Code 1103M, Washington, DC 20460-0001; (202) 233-0122; email address: roseman-orr.ammie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action affects the organization and function of the Environmental Appeals Board (EAB or Board) and the rules of practice governing administrative appeals. The rules of practice governing EAB appeals apply to any persons or entities who seek review of EPA final permit decisions under 40 CFR 124.19 by the EAB as well as persons or entities who appear before the Board in other matters.

B. When will this rule become effective?

This rule will become effective upon publication in the **Federal Register**. The Administrative Procedure Act's requirement, 5 U.S.C. 553(d), that substantive rules not be effective until at least 30 days after publication in the **Federal Register** is inapplicable because this rulemaking is procedural.

C. What is the Agency's authority for taking this action?

EPA is issuing this document under its general rulemaking authority, 5 U.S.C. 301, which provides that "[t]he head of an Executive department or military department may prescribe regulations for the government of this department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its

records, papers, and property." EPA is not one of the 15 "Executive Departments" listed at 5 U.S.C. 101, however, EPA gained housekeeping authority through the Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970).

EPA's authority to issue this procedural rule is also contained in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.* This rule does not expand the Board's authority beyond that of the Administrator in reviewing agency decisionmaking and making final agency determinations.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b) (A), provides that "rules of agency organization, procedure, or practice" are exempt from notice and comment requirements. The action the Agency is taking in this document reverses certain amendments to the Environmental Appeals Board's procedural rules and replaces them with the prior regulatory text. These procedural revisions fall under the exemption provided in APA section 553(b)(3)(A), as did the rule originally establishing the EAB and its appeal procedures. 57 FR 5320, 5322 (February 13, 1992). Some of the changes in this rule affect the organization of the Agency as it pertains to the organization and function of the EAB, and some of the changes alter the procedures applicable to appeals submitted to the EAB for adjudication. With respect to the appeals process and procedures, this action does not alter the rights or interests of the parties who come before the Board; rather, it reinstates the prior process and procedures used by the Board to review the Agency decision being appealed. Accordingly, EPA is taking no comment on this action.

II. Background

A. What action is the Agency taking?

The Agency is rescinding certain changes made to EPA's Environmental Appeals Board and its appeal process that were promulgated on August 21, 2020 (85 FR 51650) (hereafter "2020 EAB Rule" or "2020 amendments"). Specifically, the EPA is reinstating the regulatory text at 40 CFR 1.25 and most of 40 CFR 124.19 that existed prior to the 2020 amendments. The 2020 EAB Rule is subject to review consistent with the Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," section 2(a) (January 20, 2021)

(86 FR 7037, January 25, 2021). Based on that review, the Agency has determined that the 2020 EAB Rule adversely affects the administration of the Agency's appeals process and procedures and, thus, rescission of the 2020 EAB Rule is warranted. This action does not, however, alter the revisions that the 2020 EAB Rule made to 40 CFR part 49 or 71, which made the permit appeal procedures in 40 CFR 124.19 applicable to permits issued to tribes in Indian Country under part 49 (for minor and non-attainment NSR permits) and to Title V permits issued under part 71. Applying the same appeal procedures to these types of permits makes the appeals process more consistent, efficient, and transparent.

The EAB was established by rule in 1992 as an impartial body, independent of other EPA components outside of the immediate Office of the Administrator, to conduct full and fair adjudications and to allow for a broader range of input into Agency decisions by the Administrator's express delegation of authority. 57 FR 5320 (February 13, 1992). This rule reinstates the regulatory provisions related to the establishment and function of the EAB and the permit appeals process as they existed prior to the 2020 amendments. In doing so, the Administrator is ensuring that the EAB can continue to uphold the integrity of the Agency's decisionmaking, including the advancement of environmental justice.

The 2020 EAB Rule altered regulatory text pertaining to EAB procedures governing permit appeals, which are informal adjudications under the Administrative Procedure Act. Specifically, the 2020 EAB Rule was intended to preclude the EAB's review of discretionary Agency actions and to make the Board's scope of review more akin to that of federal courts. To accomplish that goal, the 2020 EAB Rule removed regulatory text pertaining to the EAB's review of challenges based on the permit issuer's exercise of discretion, as well as the Board's discretion to review important policy considerations. The changes adversely affected the Board's ability to review—in the context of a permit appeal—a permit issuer's compliance with and application of important EPA policies and Executive orders (85 FR 51652), such as Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629 (February 16, 1994), which the Board has done in many prior cases. Additionally, the 2020 EAB Rule's stated aim of aligning the Board's standard of review with that

of federal courts is not met by the 2020 EAB Rule, because the Administrative Procedure Act authorizes Federal courts to set aside any final agency action under review that is arbitrary, capricious, or an abuse of discretion. 5 U.S.C. 706. By limiting the Board's review to clearly erroneous findings of fact and conclusions of law, and excluding the review of discretionary Agency action and compliance with EPA policies and Executive orders, the 2020 EAB Rule injected uncertainty with respect to the Board's ability to review acts or omissions of the exercise of Agency discretion (and with respect to the applicability of prior related precedent). The effect of the 2020 EAB Rule also conflicts with the efficient and effective functioning of the EAB to administratively review Agency action before it is final, irrespective of a Federal court's scope or standard of review, and to ensure that Agency components consistently comply with Agency policies in a manner that comports with exercising the delegated functions of the Administrator. As such, these changes present obstacles for the Board in ensuring the integrity of Agency decisionmaking where the decision involves discretionary agency action and may impede the advancement of important policies, such as environmental justice. For this reason, this rule rescinds the changes to the EAB's standard for review in permit appeals.

The 2020 EAB Rule also adversely affected other aspects of the process for permit appeals. To purportedly "streamline the permitting appeal process," the rule set deadlines for the EAB's review by imposing a 60-day requirement to issue permit decisions. The 2020 EAB Rule also restricted the number and length of extensions of time that parties may request. Given the wide range of issues and arguments raised in petitions for review by the EAB, these restrictions are overly prescriptive. Briefing schedules, extensions of time, and even the time it takes to issue a decision are more effectively managed on a case-by-case basis after considering the nature and circumstances present in the case balanced with the resources and demands of the EAB. Existing EAB rules provide the Board the authority, in exercising its duties and responsibilities, to "do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal." 40 CFR 124.19(n). The ability of a tribunal to manage its docket—including granting extensions, setting deadlines, and determining procedural requirements—is essential to

its ability to provide an efficient, fair, and impartial adjudication. Removing the ability of the EAB to manage its caseload based on the wide range of circumstances that may be presented runs counter to those goals.

Additionally, the stated objective to "streamline" the permitting process in the 2020 EAB Rule was not well-supported. The EAB review process not only provides a meaningful opportunity for affected communities to have their concerns addressed, it also expedites the process of obtaining a final, valid permit by facilitating a process that is faster and more certain for the applicant. Permit appeals to the EAB are resolved within a reasonable timeframe and the overwhelming majority of EAB decisions resolve the dispute without the need for federal court litigation, which generally takes considerably longer. On average, very few EAB decisions are appealed to Federal court and very few of those have been overturned. Over the years the EAB has continually refined and altered its processes to reduce the amount of time it takes to effectively resolve an appeal and to make it easier for people to use the appeals process, including the use of electronic filing, making the EAB docket publicly accessible and EAB decisions publicly searchable, implementing word limits on briefs, streamlining procedures for participation in permit appeals, improving internal processes, and implementing the EAB's highly successful Alternative Dispute Resolution process. The EAB has demonstrated a commitment to continuous improvement in the permit appeal process.

The 2020 EAB Rule also altered the deadline and page limit for Amicus participation. Amicus parties in EAB cases can include impacted States, Tribes, and Municipalities (when they are not a petitioner or respondent in the appeal), trade associations, and—when a non-EPA authority is the permit issuer—the EPA's Office of General Counsel. It is in the best interest of the appeals process to provide amicus parties with reasonable timeframes in which to file briefs in appeals, so long as the time allowed will not unduly interfere with the efficiency of the process. Requiring Amicus briefs to be submitted in all cases *before* the Permit Issuer responds to a Petition for Review, and limiting the length of such briefs to 15 pages, both of which the 2020 EAB Rule does, unnecessarily restricts the EAB's consideration of amici participation in a manner that may preclude the EAB from receiving fully informative briefing of the issues on appeal and, as such, may complicate

rather than streamline or improve the permitting appeal process.

The 2020 EAB Rule also removed the Board's authority to decide on its own initiative, or *sua sponte*, to review any condition of a Resource Conservation and Recovery Act (RCRA), Underground Injection Control (UIC), National Pollutant Discharge Elimination System (NPDES), or Prevention of Significant Deterioration (PSD) permit decision reviewable under 40 CFR 124.19, even when that permit has not been appealed. Consistent with the delegated authority by the Administrator to review agency decisions, this final rule reinstates the Board's *sua sponte* authority, which has been in place since the Board was established.

With respect to the function of the Board, the 2020 EAB Rule modified the EAB's prior-existing delegation of authority by authorizing the EPA General Counsel, who frequently appears before the EAB in disputed matters as Counsel, or works closely with an EPA Region or EPA program office as "of Counsel," to issue dispositive determinations on pending EAB matters. Specifically, the 2020 EAB Rule provides that the Administrator acting through the General Counsel can issue a dispositive legal interpretation in any matter pending before the EAB (including enforcement or permit matters) or on any issues addressed by the EAB. These revisions are inconsistent with the EAB's original establishment and function and undermine the transparency, fairness, and finality of EAB decisions. When the Board was established, the Administrator recognized the need to make clear that "the Administrator's adjudicative authority and the Administrator's enforcement authority (delegated to various Regional and Headquarters enforcement officers) are delegated to, and exercised by separate and distinct components of the Agency." 57 FR 5322. For this reason, the rules expressly prohibit Board Members from being employed by the Office of General Counsel or any other office directly associated with matters that could come before the EAB. 40 CFR 1.25(e)(3). The EAB's independence from the various component offices outside the immediate Office of the Administrator is a critical element of inspiring confidence in the fairness and transparency of the Agency's appellate adjudication process. This includes independence from the Office of the General Counsel, which is not part of the immediate Office of the Administrator.

Additionally, administrative review by the EAB involves a review of the

record of decision as it existed at the time the decision was made. A post-hoc interpretation of law that is issued while an appeal is pending, and that is binding on the EAB, injects confusion into the Agency decisionmaking process and conflicts with the EAB's review of the Agency's understanding or application of the law at the time the decision was made. Transparency and fairness in the review of Agency decisionmaking is better served by not injecting a newly issued interpretation of law from the Office of General Counsel while an appeal is pending before the Board. Additionally, because the Office of General Counsel is often counsel, "of counsel" or an amicus party in Board cases, the imposition of a new binding interpretation of law issued through the Office of General Counsel during the pendency of an appeal raises the very concerns that the EAB was established to address. Moreover, this modification was unnecessary because, among other reasons, a reconsideration process exists for EAB decisions and matters can be referred to the Administrator for decision. In sum, a legal interpretation binding on the EAB issued during the pendency of an appeal undermines the EAB's exercise of the Administrator's delegated adjudicative authority as well as confidence in the fairness of the process.

The 2020 EAB Rule also established a process for the Administrator to reverse the EAB's designation of a decision for publication. A decision designated for publication means the decision is slated to be reproduced in bound volumes of the *Environmental Administrative Decisions* and appear on the Board's website as a published decision. Practically speaking, re-designating a decision as unpublished does not alter the EAB's statutory obligation to publish *all* final decisions and orders on its website under 5 U.S.C. 552(a)(2)(A) (*i.e.*, both published and unpublished final orders). The intent of the rule change, however, was not necessarily to affect which decisions are made available to the public; rather, the intent was to indicate to reviewing courts that only published EAB decisions may warrant deference. 85 FR 51653 (August 21, 2020) (noting in the preamble that "it is the express policy of the Agency that only published decisions of the EAB represent EPA's official, authoritative position with regard to the issues addressed in such decisions" and that the intent of the change is to "indicate to reviewing courts that only published EAB decisions may warrant deference"). As revised, the regulatory text added in

the 2020 EAB Rule regarding decisions for publication neither determines which decisions will be made available to the public nor forecloses a reviewing court from choosing to afford deference to an unpublished decision. Whether a decision is categorized as "published" versus "unpublished" is also not determinative of whether a party will rely on a case or cite a case to the Board. Consistent with the foundational legal principle of *stare decisis*, the Board generally follows its own prior applications of law where the same factual and legal principles are presented. The use of a system of precedential decisions makes the decisional process more transparent and consistent for all, including the public. Given all of the above, the provision providing for the Administrator to determine whether a decision should be re-categorized as unpublished or not followed in future cases could negatively affect the transparency and consistency of EAB decisionmaking, and interfere with the independence and function of the EAB to issue final decisions as delegated by the Administrator, which again is fundamental to inspiring confidence in the fairness of the Agency's appellate adjudication process.

Finally, the 2020 EAB Rule set 12-year term limits for EAB judges to serve on the Board. When the Board was established, it was created as a "permanent body with continuing functions." 57 FR 5320. For twenty-nine years, the EAB judges have been career employees and members of the Senior Executive Service (SES), governed by a specific statute implemented by the Office of Personnel Management (OPM), specifically 5 U.S.C. 3395. The EAB judge position has been classified as Career Reserved, which means that the position is filled by a career appointee and designated as such to ensure impartiality, and the public's confidence in the impartiality, of the government. 5 CFR 214.402. The Career Reserved designation is particularly appropriate for positions, like this, that involve adjudication and appeals. *Id.* In addition, imposing a 12-year term limit is unnecessary given that the Administrator assigns and appoints career appointees to serve as EAB judges, and each judge acts on the express delegated authority of the Administrator and remains accountable to the Administrator. Further, pursuant to 3395 and 5 CFR 317.901, each judge, as a member of the SES, is subject to reassignment by the Administrator to any other SES position in the Agency for which he or she qualifies, if the

Administrator so chooses. 5 U.S.C. 3395 (governing the reassignment or transfer of SES employees); 5 CFR 317.901 (setting forth procedures for effectuating SES reassignments or transfers). The added term limits neither expanded nor removed any authority that the Administrator has over the EAB judge positions. The Agency has benefited from judges who have served on the EAB for long terms because these judges have deep experience in EAB jurisprudence and provide important stability for the Board, as well as the Agency's administrative jurisprudence. Further, although the 2020 EAB Rule set 12-year term limits, it applied those limits on a "rolling basis" to the current judges, where the most senior judge's term expires three years from the effective date of the 2020 EAB Rule. 85 FR 51653. This "retroactive" application of the 12-year term limits to current judges conflicts with the "dignity and stature" that was originally intended for "the Agency's highest adjudicative body." 57 FR 5320. Potentially rotating in a new judge every three years (or even more often if vacancies occur) could inject instability into the appeals process, may appear to politicize the position in a way that is antithetical to the career reserved designation, and does not serve the Agency's intent in creating the EAB as a specialized, impartial appellate Agency tribunal. Removing the term limits leaves in place the Administrator's authority to reassign any SES judge, consistent with relevant SES statutes and regulations, if the Administrator chooses.

In sum, by rescinding the 2020 EAB Rule and reverting the regulations pertaining to the EAB's function and process to the prior existing regulatory text, the Administrator is reaffirming the EAB's original function as an impartial body, independent of other EPA components, to conduct full and fair adjudications in the exercise of the Administrator's delegated authority. In modifying the Administrator's delegation of authority to the EAB, the 2020 EAB Rule weakened the administration of the Agency's appeals process and procedures. The reversion of the regulatory text will better safeguard the EAB's ability to efficiently and effectively manage the appeals process and ensure the integrity of Agency decisionmaking, advance environmental justice, and protect public health and the environment, in accordance with the mission of the Agency. The Agency intends to further consider the advisability of future revisions to the EAB's procedural rules

to incorporate any other housekeeping revisions needed for efficiently and effectively processing appeals.

III. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget (OMB) because it is limited to agency organization, management or personnel matters.

B. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule pertains to agency management or personnel, which the EPA expressly exempts from notice and comment rulemaking requirements under 5 U.S.C. 553(a)(2).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1536, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

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

This action does not have tribal implications as specified in Executive Order 13175.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that

EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

This action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule relating to agency management or personnel; and is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects

40 CFR Part 1

Environmental protection, Organization and functions (Government agencies).

40 CFR Part 124

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 1 and 124 as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970).

- 2. Amend § 1.25 by:
 - a. Revising paragraph (e)(2);
 - b. Removing paragraphs (e)(3) and (5); and
 - c. Redesignating paragraph (e)(4) as paragraph (e)(3).

The revision reads as follows:

§ 1.25 Staff offices.

* * * * *

(e) * * *

(2) *Functions.* The Environmental Appeals Board shall exercise any authority expressly delegated to it in this title. With respect to any matter for which authority has not been expressly delegated to the Environmental Appeals Board, the Environmental Appeals Board shall, at the Administrator's request, provide advice and consultation, make findings of fact and conclusions of law, prepare a recommended decision, or serve as the final decisionmaker, as the Administrator deems appropriate. In performing its functions, the Environmental Appeals Board may consult with any EPA employee concerning any matter governed by the rules set forth in this title, provided such consultation does not violate applicable *ex parte* rules in this title.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

■ 3. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

- 4. Amend § 124.19 by:
 - a. Revising paragraphs (a)(4), (e), (g), and (l);
 - b. Removing paragraph (m) and redesignating paragraphs (n) through (p) as paragraphs (m) through (o), respectively; and
 - c. Adding a new paragraph (p).

The revisions and addition read as follows:

§ 124.19 Appeal of RCRA, UIC, NPDES and PSD Permits.

(a) * * *

(4) *Petition contents.* (i) In addition to meeting the requirements in paragraph (d) of this section, a petition for review must identify the contested permit condition or other specific challenge to the permit decision and clearly set forth, with legal and factual support, petitioner's contentions for why the

permit decision should be reviewed. The petition must demonstrate that each challenge to the permit decision is based on:

(A) A finding of fact or conclusion of law that is clearly erroneous; or

(B) An exercise of discretion or an important policy consideration that the Environmental Appeals Board should, in its discretion, review.

(ii) Petitioners must demonstrate, by providing specific citation to the administrative record, including the document name and page number, that each issue being raised in the petition was raised during the public comment period (including any public hearing) to the extent required by § 124.13. For each issue raised that was not raised previously, the petition must explain why such issues were not required to be raised during the public comment period as provided in § 124.13. Additionally, if the petition raises an issue that the Regional Administrator addressed in the response to comments document issued pursuant to § 124.17, then petitioner must provide a citation to the relevant comment and response and explain why the Regional Administrator's response to the comment was clearly erroneous or otherwise warrants review.

* * * * *

(e) *Participation by amicus curiae.* Any interested person may file an amicus brief in any appeal pending before the Environmental Appeals Board under this section. The deadline for filing such brief is 15 days after the filing of the response brief, except that amicus briefs in PSD or other new source permit appeals must be filed within 21 days after the filing of the petition. Amicus briefs must comply with all procedural requirements of this section.

* * * * *

(g) *Timing of motions for extension of time.* Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Environmental Appeals Board with a reasonable opportunity to issue an order.

* * * * *

(l) *Final disposition and judicial review.* (1) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of the final agency action.

(2) For purposes of judicial review under the appropriate Act, final agency action on a permit occurs when agency

review procedures under this section are exhausted and the Regional Administrator subsequently issues a final permit decision under this paragraph (l). A final permit decision must be issued by the Regional Administrator:

(i) When the Environmental Appeals Board issues notice to the parties that the petition for review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(3) The Regional Administrator must promptly publish notice of any final agency action in the **Federal Register** regarding the following permits:

(i) PSD permits;

(ii) Outer continental shelf permits issued under 40 CFR part 55;

(iii) Federal Title V operating permits issued under 40 CFR part 71;

(iv) Acid Rain permits appealed under 40 CFR part 78;

(v) Tribal Major Non-Attainment NSR permits issued under 40 CFR 49.166 through 49.173; and

(vi) Tribal Minor NSR permits issued under 40 CFR 49.151 through 49.161.

* * * * *

(p) *Authority to initiate review.* The Environmental Appeals Board also may decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision issued under this part for which review is available under paragraph (a) of this section. The Environmental Appeals Board must act under this paragraph (p) within 30 days of the service date of notice of the Regional Administrator's action.

[FR Doc. 2021-12291 Filed 6-10-21; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 61

[Docket ID FEMA-2018-0026]

RIN 1660-AA95

National Flood Insurance Program: Conforming Changes To Reflect the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) and the Homeowners Flood Insurance Affordability Act of 2014 (HFIAA), and Additional Clarifications for Plain Language; Correction

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Final rule; correction.

SUMMARY: On July 20, 2020, FEMA published in the **Federal Register** a final rule revising the National Flood Insurance Program (NFIP) regulations to codify certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014, and to clarify certain existing NFIP rules relating to NFIP operations and the Standard Flood Insurance Policy. This final rule provides corrections to those instructions, to be used in lieu of the information published July 20.

DATES: This correction is effective October 1, 2021.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Kelly Bronowicz, Director, Policyholder Services Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 557-9488.

SUPPLEMENTARY INFORMATION: In FR Doc. 2020-09260, beginning on page 43946 in the **Federal Register** of Monday, July 20, 2020, the following corrections are made:

Appendix A(1) to Part 61 [Corrected]

■ 1. On page 43968, in the second column, in appendix A(1) to part 61, the signatory "Administrator, Federal Insurance and Mitigation Administration" is corrected to read "Federal Insurance and Mitigation Administration".

Appendix A(2) to Part 61 [Corrected]

■ 2. On page 43976, in the second column, in appendix A(2) to part 61, the signatory “Administrator, Federal Insurance and Mitigation Administration” is corrected to read “Federal Insurance and Mitigation Administration”.

Appendix A(3) to Part 61 [Corrected]

■ 3. On page 43985, in the first column, in appendix A(3) to part 61, the signatory “Administrator, Federal Insurance and Mitigation Administration” is corrected to read “Federal Insurance and Mitigation Administration”.

Deanne B. Criswell,

Administrator, Federal Emergency
Management Agency.

[FR Doc. 2021–12236 Filed 6–10–21; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 210603–0121]

RIN 0648–BJ86

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Implementation of Emergency Decisions of the Western and Central Pacific Fisheries Commission

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

ACTION: Interim final rule; temporary specifications; request for comments.

SUMMARY: This interim final rule establishes a framework to implement short-notice decisions of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). Using the framework established through this interim final rule, this action also includes temporary specifications to implement three short-notice WCPFC decisions. NMFS is undertaking this action under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of

Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). NMFS seeks comments on this interim final rule and will respond to those comments in a subsequent final rule.

DATES:

Effective date: This interim final rule is effective on June 11, 2021.

Temporary specifications: The temporary specifications set out in the preamble are in effect from June 11, 2021 until September 14, 2021.

Comment due date: Comments on the interim final rule must be submitted in writing by July 12, 2021.

ADDRESSES: You may submit comments on the interim final rule, identified by NOAA–NMFS–2020–0150, and the regulatory impact review (RIR) prepared for the interim final rule, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2020–0150 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might 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 and 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).

Copies of the RIR, the programmatic environmental assessment (PEA), 2019 supplemental environmental assessment (SEA), and 2021 SEA prepared for National Environmental Policy Act (NEPA) purposes are available at www.regulations.gov or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–725–5033.

SUPPLEMENTARY INFORMATION:**Background on the Convention**

The Convention is concerned with the conservation and management of highly migratory fish stocks (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures adopted by the Commission and other decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

Background on WCPFC Emergency Decisions

On March 27, 2020, in response to public health concerns related to the COVID–19 pandemic, NMFS published an emergency rule providing authority to waive certain observer requirements (85 FR 17285). This rule was

subsequently extended through March 26, 2022 (86 FR 16307; March 29, 2021). On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until August 15, 2021.

NMFS regulations at 50 CFR 300.223(e) implement a WCPFC requirement for 100 percent WCPFC observer¹ coverage on purse seine vessels (with limited exceptions). Accordingly, in order to carry out the Commission's intersessional decision, NMFS has waived the requirement under 50 CFR 300.223(e) until August 15, 2021.

NMFS regulations at 50 CFR 300.216(b)(1) implement the WCPFC prohibition on at-sea transshipments for purse seine vessels. On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID-19, the Commission made an intersessional decision to modify this prohibition as follows—purse seine vessels can conduct at-sea transshipment in an area under the jurisdiction of a port State, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission subsequently extended that decision and the current extension is effective until August 15, 2021.

NMFS regulations at 50 CFR 300.215(d) and 50 CFR 300.216(b)(2) implement WCPFC provisions regarding observer coverage for at-sea transshipments. On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission subsequently extended that decision and the current extension is effective until August 15, 2021.

NMFS anticipates that the Commission may make additional short-notice decisions in the near future that require immediate implementation and are temporary in nature. NMFS regulations at 50 CFR part 300, subpart O, implement multiple WCPFC decisions that are currently in force. The WCPFC Implementation Act authorizes NMFS to promulgate such regulations as may be necessary to carry out the United States' international obligations as a member of the Commission, including recommendations and decisions adopted by the Commission. However, NMFS does not currently have a process to quickly implement short-notice WCPFC decisions requiring immediate action that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises.

The Actions

Interim Final Rule: Establishment of Framework To Implement Certain Decisions of the Commission

This interim final rule establishes a framework through which NMFS may issue temporary specifications, each for a period less than one year in total, inclusive of all extensions, that promptly suspend or modify existing regulations in 50 CFR part 300, subpart O, which implement the United States' obligations under the Convention and WCPFC decisions. This framework allows NMFS to modify or suspend existing NMFS regulations in response to short-notice WCPFC decisions, including intersessional decisions that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises. This framework helps ensure that NMFS regulations remain consistent with international obligations that may unexpectedly and quickly change in response to global events. NMFS does not intend to use this framework to implement WCPFC decisions that are routine and enter into effect at least 60 days after the decision is made, as specified in Article 20(5) of the Convention.

The process enables NMFS to implement short-notice WCPFC decisions through the issuance of temporary specifications that modify or suspend specific existing regulations at 50 CFR part 300, subpart O. As appropriate, temporary specifications may remain in effect up to 30 days after the expiration of the underlying WCPFC decision to allow NMFS adequate time to issue extensions or changes to the temporary specification, if needed, without unnecessarily exceeding the

timeframe of the underlying WCPFC decision.

Any temporary specification issued pursuant to this framework will be published in the **Federal Register** and will include information regarding the basis for the modification or suspension (*i.e.*, a description of the WCPFC decision), the temporary modifications or suspension to the regulations, and the duration of the changes. Under the framework, NMFS may change (including extend, so long as the duration of the original temporary specification in addition to any extension is less than one year) any temporary specification by publishing a new temporary specification in the **Federal Register**. NMFS may revoke any temporary specification by publishing a notification in the **Federal Register**.

NMFS reviewed the regulations at 50 CFR part 300, subpart O, implementing the Convention and WCPFC conservation and management measures, to identify reasonably foreseeable temporary specifications to the regulations in response to short-notice WCPFC decisions, including intersessional decisions, that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises.

Temporary specifications issued under the framework in this interim final rule shall be limited to the following:

(1) Modifications or suspensions of the purse seine observer coverage requirements at 50 CFR 300.223(e), including suspensions of some or all of the requirements on a fleet-wide or individual vessel basis, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information;

(2) Modifications or suspensions of the regulations at 50 CFR 300.216(b)(1) prohibiting at-sea transshipment for purse seine vessels, including suspensions of some or all of the prohibitions, prior notification for an at-sea transshipment, and suspension of the prohibitions for particular transshipments; and

(3) Modifications or suspensions of the regulations at 50 CFR 300.215(d) and 50 CFR 300.216(b)(2) regarding at-sea transshipment observer requirements, including suspensions of some or all of the requirements, suspension of some or all of the requirements for particular transshipments, requiring the carrying of observers other than WCPFC observers, requirements to carry

¹ A WCPFC Observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme. See 50 CFR 300.211.

electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information.

*Temporary Specifications:
Implementation of Recent WCPFC
Decisions That Need Immediate
Implementation*

NMFS is using the framework established under the interim final rule to implement by temporary specification the three recent WCPFC intersessional decisions (WCPFC decisions dated April 8, 2020, April 20, 2020, and May 13, 2020), described above, that are in effect until August 15, 2021. Accordingly, the requirements of the following regulations are waived. Such waiver shall remain in effect until September 14, 2021, unless NMFS earlier rescinds or extends this waiver by publication in the **Federal Register**:

- 50 CFR 300.223(e)(1). During the term of this waiver, U.S. purse seine vessels are not required to carry observers on all fishing trips in the Convention Area. However, the regulations at 50 CFR 300.215(c)(1) that require all vessels with WCPFC Area Endorsements or for which WCPFC Area Endorsements are required to carry observers when directed by NMFS to do so remain in effect;

- 50 CFR 300.216(b)(1). During the term of this waiver, U.S. purse seine fishing vessels are not prohibited from at-sea transshipment conducted within the national waters of the coastal state, in accordance with applicable national laws. Transshipment on the high seas remains prohibited; and

- 50 CFR 300.216(b)(2) and 50 CFR 300.215(d). During the term of this waiver, owners and operators of U.S. commercial fishing vessels fishing for highly migratory species in the Convention Area are not prohibited from at-sea transshipment without an observer on board the offloading or receiving vessel.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the interim final rule and temporary measures included in this action, because prior notice and the opportunity for public comment would be contrary to the public interest. As stated above, three short-notice WCPFC

decisions needing immediate implementation have already gone into effect and NMFS is implementing those three decisions through the framework process established under this interim final rule. In addition, it is likely that the WCPFC will agree upon additional short-notice decisions, which address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises, in the near future. The process established under this interim final rule would provide NMFS with the ability to carry out the obligations of the United States under the Convention, including promptly implementing the short-notice decisions of the Commission. NMFS will, however, consider and respond to public comments received on the interim final rule.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective dates for the interim final rule and the temporary measures.

Executive Order 12866

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for the interim final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no regulatory flexibility analysis was required and none has been prepared.

Paperwork Reduction Act

This interim final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 7, 2021.

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 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.215, revise paragraph (d)(1)(iii), add paragraph (d)(1)(iv), revise paragraph (d)(2)(vi), and add paragraph (d)(2)(vii) to read as follows:

§ 300.215 Observers.

* * * * *

(d) * * *

(1) * * *

(iii) The transshipment is an emergency, as specified under § 300.216(b)(4); or

(iv) The Pacific Islands Regional Administrator has by temporary specification published in the **Federal Register** modified or suspended the requirement to carry an observer for transshipments in accordance with § 300.228.

(2) * * *

(vi) The transshipment is an emergency, as specified under § 300.216(b)(4); or

(vii) The Pacific Islands Regional Administrator has by temporary specification published in the **Federal Register** modified or suspended the requirement to carry an observer for transshipments in accordance with § 300.228.

* * * * *

■ 3. In § 300.216, add paragraph (b)(1)(iii) and revise paragraph (b)(2) introductory text to read as follows:

§ 300.216 Transshipping, bunkering and net sharing.

* * * * *

(b) * * *

(1) * * *

(iii) The restrictions in paragraphs (b)(1)(i) and (ii) of this section shall not apply to transshipments that are subject to a modification or suspension issued by the Pacific Islands Regional Administrator and published in the **Federal Register** under § 300.228.

(2) *Restrictions on at-sea transshipments.* This paragraph (b)(2) does not apply to transshipments meeting any of the following conditions: The transshipment is subject to a modification or suspension issued by the Pacific Islands Regional Administrator and published in the **Federal Register** under § 300.228; the transshipment takes place entirely

within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters; or, the transshipment takes place entirely within the Overlap Area, and only includes fish caught within such waters.

* * * * *

■ 4. In § 300.222, add paragraph (yy) to read as follows:

§ 300.222 Prohibitions.

* * * * *

(yy) Fail to comply with the requirements of any temporary specification issued under § 300.228.

■ 5. In § 300.223, revise paragraphs (e)(1) introductory text and (e)(1)(ii) and add paragraph (e)(1)(iii) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(e) * * *

(1) A fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. The requirement in the preceding sentence does not apply to fishing trips that meet one of the following conditions:

* * * * *

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N latitude and 20° S latitude; or

(iii) The Pacific Islands Regional Administrator has by temporary specification published in the **Federal Register** modified or suspended the

requirement to carry an observer in accordance with § 300.228.

* * * * *

■ 6. Add § 300.228 to read as follows:

§ 300.228 Framework to implement emergency decisions.

(a) *General.* To implement short-notice Commission decisions, including intersessional decisions, that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises, the Pacific Islands Regional Administrator may, by temporary specification, modify or suspend regulations in this subpart for a period less than one year. A temporary specification under this paragraph (a) will remain in effect no longer than 30 days after the expiration of the underlying Commission decision.

(b) *Procedures for regulatory modifications or suspensions.* The Pacific Islands Regional Administrator will publish in the **Federal Register** each temporary specification issued under paragraph (a) of this section. The temporary specification will identify the basis for the modification or suspension (*i.e.*, a description of the Commission decision), the changes to the regulations, and the duration of the changes.

(c) *Procedures for revoking regulatory modifications or suspensions.* The Pacific Islands Regional Administrator may revoke any temporary specification issued under paragraph (a) of this section by notification published in the **Federal Register**.

(d) *Limitations on regulatory modifications or suspensions.* Temporary specifications issued under paragraph (a) of this section shall be limited to the following:

(1) Modifications or suspensions of the purse seine observer coverage requirements at § 300.223(e), including the Pacific Islands Regional Administrator's suspension of some or all of the requirements on a fleet-wide or individual vessel basis, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information;

(2) Modifications or suspensions of the regulations at § 300.216(b)(1) prohibiting at-sea transshipment for purse seine vessels, including suspensions of some or all of the prohibitions, prior notification to an address specified by the Pacific Islands Regional Administrator for an at-sea transshipment, and authority of the Pacific Islands Regional Administrator to suspend the prohibitions for particular transshipments; and

(3) Modifications or suspensions of the regulations at §§ 300.215(d) and 300.216(b)(2) regarding at-sea transshipment observer requirements, including suspensions of some or all of the requirements, the Pacific Islands Regional Administrator's authorization to suspend some or all of the requirements for particular transshipments, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information.

[FR Doc. 2021-12258 Filed 6-10-21; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 86, No. 111

Friday, June 11, 2021

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

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE-2017-BT-TP-0008]

RIN 1904-AD83

Energy Conservation Program: Test Procedures for Commercial Equipment; Early Assessment Review: Commercial Refrigerators, Refrigerator-Freezers, and Freezers

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (“DOE”) is undertaking an early assessment review to determine whether amendments are warranted for the test procedure for commercial refrigerators, refrigerator-freezers, and freezers (“CRE”). DOE has identified certain issues associated with the currently applicable test procedure on which DOE is interested in receiving comment. The issues identified in this document concern scope and definitions, industry test standards, test conditions for specific CRE categories, test procedure clarifications and modifications, alternative refrigerants, certification of volumes, and test procedure waivers. DOE welcomes written comments from the public on any subject within the scope of this document, including topics not raised in this request for information (“RFI”).

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

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2017-BT-TP-0008 and/or RIN 1904-AD83, by any of the following methods:

1. **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

2. **Email:** To CRE2017TP0008@ee.doe.gov. Include docket number EERE-2017-BT-TP-0008 and/or RIN 1904-AD83 in the subject line of the message.

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

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

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

The docket web page can be found at: <https://www.regulations.gov/docket/EERE-2017-BT-TP-0008>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III of this document for information on how to submit comments through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building

Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1943. Email: ApplianceStandardsQuestions@ee.doe.gov.

Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-9496. Email: Peter.Cochran@Hq.Doe.Gov.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE established an early assessment review process to conduct a more focused analysis that would allow DOE to determine, based on statutory criteria, whether an amended test procedure is warranted. 10 CFR part 430 subpart C appendix A section 8(a). This RFI requests information and data regarding whether an amended test would more accurately and fully comply with the requirement that the test procedure produce results that measure energy use during a representative average use cycle for the equipment, and not be unduly burdensome to conduct. To inform interested parties and to facilitate this process, DOE has identified several issues associated with the currently applicable test procedures on which DOE is interested in receiving comment. Based on the information

received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for an amended test procedure.

If DOE makes an initial determination that an amended test procedure would more accurately or fully comply with statutory requirements, or DOE's analysis is inconclusive, DOE would undertake a rulemaking to issue an amended test procedure. If DOE makes an initial determination based upon available evidence that an amended test procedure would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that an amended test procedure is not warranted.

A. Authority

The Energy Policy and Conservation Act, as amended ("EPCA"),¹ among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C² of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317 as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CRE, the subject of this document. (42 U.S.C. 6311(1)(E))

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

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set

forth under 42 U.S.C. 6316(a) and (e) (applying the preemption waiver provisions of 42 U.S.C. 6297)).

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including CRE, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)) DOE is publishing this RFI to collect data and information to inform its decision to satisfy the 7-year-lookback review requirement.

B. Rulemaking History

The current DOE test procedure for CRE is codified in the Code of Federal Regulations ("CFR") at 10 CFR part 431, subpart C, appendix B ("Appendix B"). DOE last updated the test procedure in a final rule published on April 24, 2014 ("April 2014 Final Rule"). 79 FR 22277. Specifically, DOE clarified certain terms, procedures, and compliance dates to improve repeatability and provide additional detail compared to the prior version of the test procedure. DOE noted that the amendments in the April 2014 Final Rule would not affect the measured energy use of CRE as measured under the prior version of the test procedure. 79 FR 22277, 22280–22281. DOE's current test procedure incorporates by reference the following industry standards: (1) Air-Conditioning, Heating, and Refrigeration Institute ("AHRI") Standard 1200 (I-P)-2010 ("AHRI 1200–2010"), "Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets"; (2) the American Society of Heating, Refrigerating, and Air-Conditioning Engineers ("ASHRAE") Standard 72–2005 ("ASHRAE 72–2005"), "Method of Testing Commercial Refrigerators and Freezers," which was approved by the American National Standards Institute ("ANSI") on July 29, 2005; and (3) ANSI/Association of Home Appliances ("AHAM") Standard HRF–1–2008 ("AHAM HRF–1–2008"), "Energy, Performance, and Capacity of Household Refrigerators, Refrigerator-Freezers, and Freezers," for determining refrigerated volumes for CRE.

II. Request for Information

DOE is publishing this RFI to collect data and information during the early assessment review to inform its

decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an amended test procedure rulemaking, and if so, to assist in the development of proposed amendments. Accordingly, in the following sections, DOE has identified specific issues on which it seeks input to aid in its analysis of whether an amended test procedure for CRE would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct. DOE also welcomes comments on other issues relevant to its early assessment that may not specifically be identified in this document.

A. Scope and Definitions

CRE means refrigeration equipment that is not a consumer product (as defined in 10 CFR 430.2); is not designed and marketed exclusively for medical, scientific, or research purposes; operates at a chilled, frozen, combination chilled and frozen, or variable temperature; displays or stores merchandise and other perishable materials horizontally, semi-vertically, or vertically; has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors; is designed for pull-down temperature applications or holding temperature applications; and is connected to a self-contained condensing unit or to a remote condensing unit. 10 CFR 431.62.

1. Ice-Cream Freezers

DOE further defines categories of CRE, including "ice-cream freezer." DOE defines an ice-cream freezer as a commercial freezer that is designed to operate at or below -5°F ($\pm 2^{\circ}\text{F}$) ($-21^{\circ}\text{C} \pm 1.1^{\circ}\text{C}$) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream. 10 CFR 431.62. As such, under this definition, equipment not designed, marketed, or intended specifically for the storage, display, or dispensing of ice cream, would not be considered an "ice-cream freezer," regardless of operating temperature.

A manufacturer's design intent may not always be explicit for all CRE. For example, a manufacturer may design a model capable of storing, displaying, or dispensing of ice cream, and intend for that operation when in use, but only specify technical operating parameters in the manufacturer literature for that model with no explicit reference to ice cream. In such a case, the

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

² For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

manufacturer's design intent would be unknown to a third party.

DOE is considering amendments to the definition of ice-cream freezer that would incorporate technical features and characteristics to better delineate this equipment from other commercial freezers.

Issue 1: DOE requests comment on the technical features that characterize ice cream freezers and distinguish them from commercial freezers capable of operating at or below -5°F ($\pm 2^{\circ}\text{F}$).

Additionally, the ice-cream freezer definition references "ice cream", but the term is not specifically defined. Gelato, frozen yogurt, and other ice-cream-like products are typically displayed, stored, or dispensed in the same manner as ice-cream. The CRE used for these food products is likely similar, if not identical, to equipment used to store, display, or dispense ice cream.

Issue 2: DOE requests comment on if further specificity is needed for the term "ice-cream". DOE is also interested in whether manufacturers are certifying equipment intended to store gelato or other ice-cream like products as ice-cream freezers or freezers.

Appendix B requires testing all ice-cream freezers to an integrated average temperature ("IAT")³ of -15°F . However, the term "ice-cream freezer" includes a variety of equipment with a range of typical operating temperatures during normal use. For example, certain ice-cream freezers are designed to operate considerably below -5°F (sometimes referred to as "hardening" cabinets and specifically designed for ice cream storage), while other ice-cream freezers are designed to operate closer to 0°F during typical use (e.g., "dipping cabinets" and other equipment used to hold ice cream intended for immediate consumption). Ice-cream freezers intended for higher-temperature operation are often not capable of achieving an IAT of -15°F . In such an instance, Appendix B requires testing the units to the lowest application product temperature ("LAPT").

Of the 445 ice-cream freezer models certified to DOE,⁴ 55 are rated based on LAPTs warmer than -15°F , including 29 models with a rating temperature of -5°F . Many of these models are horizontal or service over counter and intended to hold ice cream for immediate consumption. Accordingly,

testing at an IAT of 0°F may be more representative of typical operation than testing to the LAPT for these models.

If certain ice-cream freezers not capable of reaching an IAT of -15°F should instead be tested at an IAT of 0°F , there may be an opportunity to better distinguish between ice-cream freezers and other freezers, as discussed earlier in this section. For example, the ice-cream freezer definition could be revised to refer to any freezer capable of operating at an IAT of -15°F , regardless of the product stored in the equipment. Any other equipment currently meeting the ice-cream freezer definition but not capable of reaching an IAT of -15°F would instead be classified and tested as freezers, not ice-cream freezers. Such an approach would use the measured IAT of the equipment as the foundation for this equipment definition, thus eliminating the reliance on manufacturer intent or the end use of the equipment.

Issue 3: DOE seeks feedback on whether equipment that meets the current ice-cream freezer definition but cannot operate at an IAT of $-15^{\circ}\text{F} \pm 2^{\circ}\text{F}$ should be tested at an IAT of $0^{\circ}\text{F} \pm 2^{\circ}\text{F}$ instead of the LAPT.

Issue 4: DOE additionally requests comment on whether the ice-cream freezer definition should only refer to equipment that is capable of achieving an IAT of $-15^{\circ}\text{F} \pm 2^{\circ}\text{F}$ without any reference to the manufacturer's designed, marketed, or intended use.

2. High-Temperature CRE

Section 2.1 of Appendix B requires testing commercial refrigerators to an IAT of $38^{\circ}\text{F} \pm 2^{\circ}\text{F}$. DOE is aware of equipment that meets the definition of a commercial refrigerator but is capable of operating only at temperatures above the $38^{\circ}\text{F} \pm 2^{\circ}\text{F}$ IAT required for testing. Consistent with the current test procedure, manufacturers certify such equipment using the LAPT setting. Examples of these types of equipment include CRE designed for storing or displaying chocolate and/or wine, with typical recommended storage temperatures around 55°F .

DOE is considering adding a definition for "high-temperature refrigerator" to better delineate commercial refrigerators not capable of operating at the IAT required for testing a commercial refrigerator. DOE is also considering establishing separate test requirements for high-temperature refrigerators, including the IAT required for testing. For consumer refrigeration products, DOE established the miscellaneous refrigeration product category to capture such products, with

"coolers" tested at a standardized cabinet temperature of 55°F .⁵

Issue 5: DOE requests comment on whether an IAT of $55^{\circ}\text{F} \pm 2^{\circ}\text{F}$ is an appropriate test condition for commercial high-temperature refrigerators. DOE also requests data on the typical operating temperatures of CRE that operate above an IAT of $38^{\circ}\text{F} \pm 2^{\circ}\text{F}$.

Issue 6: DOE requests comment on whether any additional changes or clarifications are needed to the test procedure to better account for the energy consumption of commercial high-temperature refrigerators. For example, DOE requests information on whether the current loading and door-opening requirements are appropriate for high-temperature CRE.

B. Updates to Industry Test Standards

As discussed previously, DOE's test procedure for CRE currently incorporates by reference AHRI 1200–2010, ASHRAE 72–2005, and AHAM HRF–1–2008. 10 CFR 431.63. AHRI 1200–2010 also references ASHRAE 72–2005 and AHAM HRF–1–2008.

Since establishing the DOE test procedure in Appendix B, AHRI, ASHRAE, and AHAM have published updated versions of the referenced test standards. On October 1, 2013, ANSI approved an updated version of AHRI 1200, ANSI/AHRI Standard 1200 (I–P), "2013 Standard for Performance Rating of Commercial Refrigerated Display Merchandizers and Storage Cabinets," ("AHRI 1200–2013"). On August 1, 2018, ANSI approved an updated version of ASHRAE 72, ANSI/ASHRAE Standard 72–2018, "Method of Testing Open and Closed Commercial Refrigerators and Freezers," ("ASHRAE 72–2018"). AHAM more recently approved and published an updated version of its industry test standard, AHAM HRF–1–2019, "Energy and Internal Volume of Refrigerating Appliances," ("AHAM HRF–1–2019"). The changes within these updated industry test standards are either editorial, to improve clarity, to better harmonize with the DOE test procedure, or relevant to other product types (e.g., consumer refrigerators). Based on DOE's initial assessment, the changes in the updated versions of the industry test standards would not impact the measured energy consumption, volume, or Total Display Area ("TDA") of CRE, as applicable.

DOE is considering whether to update the current CRE test procedure and incorporate by reference the updated

³ Integrated average temperature means the average temperature of all test package measurements taken during the test. 10 CFR 431.62.

⁴ Based on review of DOE's Compliance Certification Database, available at <https://www.regulations.doe.gov/certification-data> (accessed February 5, 2021).

⁵ See 10 CFR part 430, subpart B, appendix A, section 3.2.

industry test standards: AHRI 1200–2013, ASHRAE 72–2018, and AHAM HRF–1–2016. These references would replace previous references to the superseded AHRI 1200–2010, ASHRAE 72–2005, and AHAM HRF–1–2008 standards referenced in the current CRE test procedure.

DOE is also aware of updates being considered for AHRI 1200–2013 and ASHRAE 72–2018. DOE has participated in the industry committee meetings in which updates to these industry standards are being developed. Based on these meetings, the changes being considered by the industry committee appear intended largely to improve the clarity, consistency, and representativeness of the industry test methods. For these and the other referenced industry standards, were DOE to determine to propose an amended CRE test procedure, DOE would consider adopting the most updated industry test procedures available during the course of such a rulemaking.

Issue 7: DOE requests comment on whether it should reference the most recent versions of AHRI 1200 or ASHRAE 72 and whether any of the updates to these standards would have an impact on the measured energy consumption of CRE, and if so, how. DOE additionally requests comment on whether the CRE test procedure should reference the most current version of AHAM HRF–1 and whether any of the updates to that standard would have an impact on measured volume, and if so, how.

AHRI has another rating standard applicable to CRE that use a secondary coolant or refrigerant, AHRI Standard 1320 (I–P), “2011 Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets for Use With Secondary Refrigerants,” (“AHRI 1320–2011”), approved by ANSI on April 17, 2012. AHRI 1320–2011 is applicable to cases that are equipped and designed to work with electrically driven, medium-temperature, single-phase secondary coolant systems, but excludes equipment used for low-temperature applications, secondary coolants involving a phase change (e.g., ice slurries or carbon dioxide), and self-contained CRE. AHRI 1320–2011 includes similar rating temperature conditions as those in AHRI 1200–2013 and references ASHRAE 72–2005 and AHAM HRF–1–2008 for the measurement of energy consumption and calculation of refrigerated volume, respectively. The only substantive differences between AHRI 1200–2013 and AHRI 1320–2011 are the inclusion

of secondary refrigerant circulation pump energy consumption in the calculation of total daily energy consumption and revised coefficients of performance to determine compressor energy consumption. DOE is evaluating AHRI 1320–2011 as a potential test method to rate CRE that use secondary refrigerants.

Issue 8: DOE requests comment on whether AHRI 1320–2011 would be an appropriate test method to measure the total daily energy consumption of CRE that use a secondary refrigerant circuit, and whether it would provide representative measurements of energy use. DOE also seeks information and data on CRE designed to work with electrically driven, medium-temperature, single-phase secondary coolant systems, including the typical field installations and operating conditions.

Issue 9: DOE also requests comment on whether manufacturers sell or plan to sell CRE with secondary coolant that would be outside the stated applicability of AHRI 1320–2011, including low-temperature equipment or CRE using secondary coolants with a phase change (e.g., ice slurries or carbon dioxide), and on whether any other existing test standards are appropriate for rating such equipment.

C. Test Conditions for Specific CRE Categories

DOE has identified specific categories of CRE that are not currently subject to the DOE test procedure. These certain categories of CRE either cannot be tested using DOE’s current test procedure or the current test procedure may not be representative of their use. These categories are discussed in the following paragraphs. In this RFI, DOE is considering whether amendments are warranted to DOE’s current test procedures to provide for the appropriate testing of such categories of CRE. This section discusses potential definitions and test procedures for each category of CRE identified. Additionally, the U.S. Environmental Protection Agency (“EPA”) ENERGY STAR program recently announced that it is considering three of these equipment categories for scope expansion and test method development: Refrigerated preparation and buffet tables; chef bases or griddle stands; and blast chillers and freezers.⁶ DOE will consider information gathered through that process when determining

whether these equipment categories should be defined and included within the scope of DOE’s CRE test procedure.

1. Salad Bars, Buffet Tables and Refrigerated Preparation Tables

Salad bars, buffet tables, and other refrigerated holding and serving equipment, such as refrigerated preparation tables, are CRE that store and display perishable items temporarily during food preparation or service. These units typically have easily accessible or open bins that allow convenient and unimpeded access to the refrigerated products. In the April 2014 Final Rule, DOE did not include test procedures for this equipment, but maintained that this equipment meets the definition of CRE and could therefore be subject to future test procedures and energy conservation standards. 77 FR 22278, 22281. In this RFI, DOE is considering definitions and test procedures applicable to salad bars, buffet tables, and refrigerated preparation tables.⁷ As discussed in sections II.C.4 and II.C.5 of this RFI, DOE is also requesting information on other refrigerated holding and serving equipment, including definitions and appropriate test procedures.

ASTM International F2143–16 “Standard Test Method for Performance of Refrigerated Buffet and Preparation Tables” (“ASTM F2143–16”) provides the following definitions for refrigerated buffet and preparation tables:

- *Refrigerated buffet and preparation table*—equipment designed with a refrigerated open top or open condiment rail.
- *Refrigerated buffet table or unit*—equipment designed with mechanical refrigeration that is intended to receive refrigerated food and maintain food product temperatures and is intended for customer service such as a salad bar. A unit may or may not be equipped with a lower refrigerated compartment.
- *Refrigerated food preparation unit*—equipment designed with a refrigerated open top or open condiment rail such as refrigerated sandwich units, pizza preparation tables, and similar equipment. The unit may or may not be equipped with a lower refrigerated compartment.

DOE will consider these definitions if it determines that definitions for these equipment categories are appropriate. DOE notes that certain terms used within these definitions are undefined

⁶ Information and materials for ENERGY STAR’s Specification Version 5.0 process are available at https://www.energystar.gov/products/spec/commercial_refrigerators_and_freezers_specification_version_5_0_pd.

⁷ While the April 2014 Final Rule did not specifically refer to refrigerated preparation tables, DOE is considering them in this RFI because they have similar features to salad bars and buffet tables (e.g., an open top holding refrigerated pans) and are used during food preparation.

(e.g., condiment rails, food product temperatures). Additionally, DOE is not aware of any other industry standard definitions for these equipment types (nor for salad bars). DOE is requesting feedback to better understand the appropriate terms, definitions, and operating characteristics of salad bars, buffet tables, and refrigerated preparation. This information would inform DOE's decision to group or differentiate different types of equipment within this category in any eventual definitions or test procedures.

Issue 10: DOE requests comment on the suitability of the ASTM F2143–16 definitions for refrigerated buffet and preparation tables (and also their applicability to salad bars) as potential regulatory definitions for this equipment. DOE requests comment on whether any further delineation of the equipment category, salad bars, buffet tables, and refrigerated preparation tables, is necessary to account for the range of performance related features available in this equipment (e.g., presence of pan covers, refrigerated storage compartments, and any other unique configurations or features that may require consideration for any potential test procedures).

Issue 11: DOE requests comment on the specific features and equipment capabilities that should be included in definitions for refrigerated salad bars,

buffet tables, and preparation tables. For example, DOE seeks information on the factors that would differentiate this equipment from other typical CRE. DOE also requests whether potential definitions should specify temperature operating ranges, and if so, what the appropriate ranges would be.

The configuration of salad bars, buffet tables, and refrigerated preparation tables may also raise questions as to whether a unit is commercial hybrid refrigeration equipment. *Commercial hybrid refrigeration equipment* is a unit of CRE (1) that consists of two or more thermally separated refrigerated compartments that are in two or more different equipment families, and (2) that is sold as a single unit. 10 CFR 431.62. Additional detail may be necessary to distinguish between a unit that is a salad bar, buffet table, or refrigerated preparation table and a unit that is commercial hybrid equipment that includes a salad bar, buffet table, or refrigerated preparation table. Refrigerated salad bars, buffet tables, and preparation tables typically have removable pans or bins that directly contact the chilled air in the refrigerated compartment of the unit. With that configuration, the entirety of the chilled compartment and surface pans would potentially be considered a refrigerated salad bar, buffet table, or preparation

table. In contrast, if a unit includes solid partitions between the chilled compartment and the pans or bins on top of the unit, such a configuration would potentially be considered thermal separation and the unit would be considered a commercial hybrid consisting of a refrigerated salad bar, buffet table, or preparation table with a refrigerator and/or freezer.

Issue 12: DOE requests comment on whether the presence of thermally separating partitions should be considered as a factor to differentiate between refrigerated salad bars, buffet tables, and preparation tables on the one hand, and commercial hybrid units consisting of a refrigerated salad bar, buffet table, or preparation table with a refrigerator and/or freezer on the other hand.

In conjunction with considering definitions for this equipment, DOE is also considering whether to adopt a test procedure to evaluate their energy consumption. DOE reviewed ASTM F2143–16 and noted several differences between this test method and DOE's current test procedure for CRE.

Specifically, ASTM F2143–16 specifies different rating conditions for test room dry-bulb temperature and moisture content than the current DOE test procedure. Table II–1 summarizes these differences.

TABLE II–1—TEST ROOM DRY-BULB TEMPERATURE & MOISTURE CONTENT STANDARDS COMPARISON

Equipment type	Test standard	Test room dry bulb temperature	Wet bulb temperature (relative humidity)	Moisture content (lb/lb dry air)
Currently Covered CRE	ASHRAE 72–2005 (incorporated by reference).	75.2 °F ± 1.8 °F	64.4 °F ± 1.8 °F (49–62 percent *)	0.009–0.011
Buffet and Preparation Tables	ASTM F2143–16	86 °F ± 2 °F	66.2 °F ± 1.8 °F* (30–40 percent)	0.008–0.010

* Equivalent value from psychrometric conversion. ASHRAE 72–2005 specifies wet bulb temperature, while ASTM F2143–16 specifies relative humidity.

Issue 13: DOE requests comment and supporting data on test room dry-bulb temperature and moisture content typically experienced by refrigerated salad bars, buffet tables, and preparation tables operating in the field. DOE requests comment on whether these conditions are significantly different from those encountered by conventional CRE and would justify adopting separate rating conditions for refrigerated salad bars, buffet tables, and preparation tables.

For measuring these ambient conditions, ASHRAE 72–2018 and ASTM F2143–16 specify the same measurement locations; however, the locations may require further specificity depending on the configuration of the refrigerated salad bar, buffet table, or preparation table under test. For

example, is the measurement location based on the highest point of the unit under test could be based on the height of the refrigerated table surface and pan openings or on the height of any lid or cover over the pans, if included. Additionally, the measurement location at the center of the unit could be based on the geometric center of the unit determined from the height of the open pan surfaces or on the geometric center of any door openings (for those units with refrigerated compartments below the pan area).

Issue 14: DOE requests comment on the appropriate locations for recording ambient conditions when testing refrigerated salad bars, buffet tables, and preparation tables to ensure repeatable and reproducible testing for a range of equipment configurations.

DOE notes that ASTM F2143–16 specifies temperature measurements for refrigerated preparation or buffet tables be taken from standardized pans filled with distilled water. ASTM F2143–16 also specifies measuring the temperature in any chilled compartments for refrigerated buffet and preparation tables using three thermocouples in an empty, unloaded compartment. DOE's current test procedure, which incorporates by reference ASHRAE 72–2005 and AHRI 1200–2010, requires that integrated average temperature measurements be taken from test simulators consisting of a plastic container filled with a sponge saturated with a 2-percent mixture of propylene glycol and distilled water. See ASHRAE 72–2005, section 6.2.1. Additionally, the DOE test procedure

requires 70 to 90 percent of the compartment net usable volume to be loaded with filler material and test simulators for testing. See ASHRAE 72–2005, section 6.2.5. Refrigerated salad bars, buffet tables, and preparation tables may not typically be loaded to 70 percent of their net usable volume due to their use for service rather than long-term storage but testing with the refrigerated compartment entirely empty also may not be representative of average use.

Issue 15: DOE requests comment on the appropriateness of using only distilled water as the test medium to represent thermo-physical properties of foods that are typically stored in the surface pans of refrigerated salad bars, preparation tables, or buffet tables. DOE requests comment on whether adopting test packages and filler materials similar to DOE's current test procedure (as specified in ASHRAE 72–2005) may better represent the properties of these foods, instead of distilled water.

Issue 16: DOE requests comment on the feasibility of requiring temperature measurements in closed refrigerated compartments of refrigerated salad bars, buffet tables, and preparation tables using test packages as specified in ASHRAE 72, and whether the compartments should be loaded with any filler packages (and to what percent of the net usable volume) for testing. If the test packages are not appropriate for measuring compartment temperatures, DOE requests comment on alternatives that should be used instead (e.g., thermocouples located in pans filled with distilled water, thermocouples as specified in ASTM F2143–16, or weighted thermocouples).

Additionally, ASTM F2143–16 specifies the pans for holding water to be standard 4-inch deep ⅙-size metal steam table pans with a weight of 0.70 ± 0.07 lb. ASTM F2143–16 allows for manufacturer specified pans if the unit is designed specifically for such pans. DOE notes that manufacturers typically specify pan dimensions or provide pans for their units, but some manufacturers do not provide a pan depth or may specify a range of possible pan depths. DOE also notes that pan materials can vary and are not always specified by the manufacturer.

Issue 17: DOE requests comment on whether pan dimensions should be standardized if testing refrigerated salad bars, buffet tables, and preparation tables is required, or whether these units should be tested with pans meeting manufacturer-recommended pan dimensions. If pans were standardized, DOE requests comment on whether the dimensions described in

ASTM F2143–16 are appropriately representative of what is used, or whether another set of dimensions or materials would be more appropriate. DOE also requests information on whether the pan material should be defined in greater detail, recognizing that ASTM F2143–16 specifies only that the pans be “metal.”

Section 10.5.6 of ASTM F2143–16 specifies that if it is possible to control cooling to the display area independently of the refrigerated cabinet, the cooling to the display area is turned off and all pans are to be moved from the display area to the refrigerated cabinet underneath after the active period. The ability to control cooling in both the display area and the refrigerated cabinet independently of each other suggests that this language applies to units with thermally-separated compartments and pan areas, which may be considered commercial hybrid refrigeration equipment.

Issue 18: DOE requests comment on whether moving pans from the display area to the refrigerated compartment as specified in section 10.5.6 of ASTM F2143–16 is appropriate for testing refrigerated salad bars, buffet tables, and preparation tables. DOE further requests feedback on whether storing pans in a refrigerated compartment is typical only for those units with certain configurations—e.g., thermal separation between the compartment and refrigerated pan area or closable covers for the pan area.

As described, refrigerated salad bars, buffet tables, and preparation tables store and display perishable items temporarily during food preparation or service. Due to the short duration of use of salad bars, buffet tables, and preparation tables, these equipment types may not be used for the same 24-hour duration used to characterize performance for other categories of CRE. However, ASTM F2143–16 specifies a 24-hour test, with an active period of 8 hours and a standby period of 16 hours. The active period provisions contain instructions for a cover, if equipped: Open for 2 hours, closed for 4 hours, open for 2 hours. These provisions also contain instructions for a door opening sequence: Every 30 minutes, each cabinet door or drawer, or both, shall be fully opened sequentially, one at a time, for 6 consecutive seconds. For units with pass-thru doors, only the doors on one side of the unit are opened.

Issue 19: DOE requests comment on the typical daily usage of refrigerated salad bars, buffet tables, and preparation tables. Additionally, DOE requests feedback on whether these CRE are used for long-term storage of food or only

short-term storage during food preparation or service periods. DOE also requests comment on whether the daily use of this equipment varies depending on configuration or other technical characteristics.

Issue 20: DOE requests comment on the applicability of the ASTM F2143–16 door and cover opening specifications. If the ASTM door and cover opening requirements are not representative of typical use, DOE requests comment on an appropriate door and cover opening sequence. For example, DOE requests comment on whether the door-opening requirements specified in ASHRAE 72–2018 are appropriate for refrigerated salad bars, buffet tables, and preparation tables.

ASHRAE 72–2018 and ASTM F2143–16 have different loading requirements for stabilization. ASTM F2143–16 specifies that the unit operates with empty pans for at least 2 hours, water be pre-cooled before being loaded into the pans, and, once the water has been loaded into the pans, that the thermostat be calibrated until the pan temperatures are never outside of 33 °F to 41 °F for any 15-minute period over a 4-hour measurement period. Although ASHRAE 72–2018 does not specify how to test units with display pans, it generally provides that the unit be loaded with test simulators and filler packages and then operated to establish steady-state conditions over consecutive 24-hour periods or refrigeration cycles.

Issue 21: DOE requests comment on the appropriate stabilization method to use when testing refrigerated salad bars, buffet tables, and preparation tables.

ASTM F2143–16 instructs that if a buffet or preparation table is equipped with a refrigerated compartment, the compartment air temperature is to be between 33 °F and 41 °F. Likewise, the water temperature of the pans placed in the display area also are to be between 33 °F and 41 °F. Alternatively, the DOE test procedure for other CRE requires IATs of $38 \text{ °F} \pm 2.0 \text{ °F}$ for medium temperature applications. Through preliminary research, DOE has found that buffet and preparation tables use a variety of refrigeration methods for cooling the pans in the display area and the refrigerated compartment. In some configurations, units might not be able to maintain all pans and the refrigerated compartment within the specified temperature range. For example, units with a single refrigeration system and thermostat control for temperatures in either the refrigerated compartment or in the pans. As a result, it may be possible for only the refrigerated compartment or the pans, but not both,

to be kept within a specified temperature range during operation.

Issue 22: DOE requests comment on appropriate temperature ranges for all pans and compartments during testing, and whether the test temperature should be specified as an allowable range or as a target IAT with a specified tolerance. Additionally, if a target IAT is appropriate, the pans and any refrigerated compartment IAT could be measured separately from each other, or all temperature measurement locations within the refrigerated compartment and pans could be averaged together to determine a single IAT. If separate IATs of the pans and the compartment should be used, DOE requests comment on which IAT should be used to determine the appropriate thermostat control (if the unit only has one overall temperature control).

ASTM F2143–16 specifies the reporting of “production capacity,” which is defined as the total volume of the pans when each pan is filled within one-half inch of the rim. However, energy consumption of refrigerated buffet and preparation tables likely varies with pan volume as well as the volume of any closed refrigerated compartments. Therefore, both values are of interest when considering metrics that define energy performance. Additionally, pan surface area could be another possible metric that defines energy performance, similar to TDA for horizontal open equipment classes. This method may eliminate the variability with different test pan dimensions. However, using either pan surface area or TDA as the relevant performance metric may lead to difficulty when also accounting for the storage volume of any refrigerated compartments in the equipment.

Issue 23: DOE requests comment on the potential methodologies for determining pan volume, pan surface area, and pan TDA, as well as refrigerated compartment volume for refrigerated salad bars, buffet tables, and preparation tables in a potential test procedure for this equipment. DOE additionally requests comment on which parameter(s) (e.g., total pan volume, pan surface area, TDA, or a combined metric), may best represent the useful “capacity” of this equipment.

ASTM F2143–16 does not account for defrost cycles when testing this equipment, other than indicating in the test report whether a defrost cycle occurred. ASHRAE 72–2018 directs that the test period begins with a defrost cycle. Defrost cycles increase the energy consumption of refrigeration equipment; however, through preliminary research, DOE has found that most refrigerated

salad bars, buffet tables and preparation tables use off-cycle defrosts, which melt any frost accumulation through the evaporator fan running during a compressor off-cycle. This method of defrost does not actively introduce heat to melt the accumulated frost and may occur during the compressor’s normal cycling operation (i.e., there may not be an identifiable defrost occurrence in the measured test data).

Issue 24: DOE requests comment on whether a possible test procedure should consider defrost cycles for refrigerated salad bars, buffet tables, and preparation tables, and if so, how.

2. Pull-Down Temperature Applications

As defined, a CRE must be designed for holding temperature applications⁸ or pull-down temperature applications. 10 CFR 431.62 (42 U.S.C. 6311(9)(A)(vi)) “Pull-down temperature application” is a commercial refrigerator with doors that, when fully loaded with 12-ounce beverage cans at 90 °F, can cool those beverages to an average stable temperature of 38 °F in 12 hours or less. 10 CFR 431.62 (42 U.S.C. 6311(9)(D)). CRE within this definition are typically known as beverage merchandisers or beverage coolers because of their use in displaying individually packaged beverages for sale, and their ability to rapidly cool such beverages. Such equipment with transparent doors is currently subject to DOE’s test procedures set forth at 10 CFR 431.64 and required to comply with the energy conservation standards specified at 10 CFR 431.66(e).

DOE’s current CRE test procedure does not include any procedure to verify a unit’s pull-down performance for CRE meeting the pull-down temperature application definition. For example, the test procedure does not provide instructions for the starting conditions of the equipment (e.g., whether the equipment begins the test in a pre-cooled state or at ambient temperature conditions), loading of the cans (e.g., whether the equipment must be loaded to full within a certain amount of time), or how to measure the temperature of the cans to confirm cooling to 38 °F.

Issue 25: DOE seeks information on whether CRE that provides pull-down temperature applications is sufficiently differentiated from other types of CRE. If not, DOE seeks comment on how manufacturers currently determine whether a model meets the pull-down temperature application criteria. DOE

⁸ “Holding temperature application” means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer. 10 CFR 431.62 (42 U.S.C. 6311(9)(B)).

requests comment on appropriate starting conditions, loading methods, and other necessary specifications for a potential test method to verify the pull-down performance of a commercial refrigerator.

Whereas the current CRE test procedure specifies that commercial refrigerators designed for pull-down applications be tested at steady state (see 10 CFR 431.64(b), and Appendix B section 2.1), pull-down periods may account for a substantial amount of the energy these models consume in actual operation. In order to better reflect the representative energy consumption associated with pull-down periods, DOE is considering revising the test method for commercial refrigerators designed for pull-down applications to also reflect energy consumption during the pull-down period.

Issue 26: DOE requests comment and supporting data on the energy consumption associated with pull-down operation for commercial refrigerators designed for pull-down temperature applications, including the amount of time these models typically spend in both pull-down conditions and steady-state operation. DOE additionally requests comment on whether a modified test method (i.e., one that accounts for both pull-down and steady state performance) might be more appropriate to represent the energy consumption of equipment in this class.

While the cooling criteria in the pull-down temperature application definition is in terms of cooling beverage cans, the definition is not explicitly limited to beverage merchandisers and beverage coolers. Other equipment with solid doors intended to rapidly cool or freeze food, commonly referred to as blast chillers and blast freezers, may also meet the pull-down temperature application definition. DOE does not define blast chiller and/or blast freezers. The California Code of Regulations (“CCR”) defines a blast chiller as a refrigerator designed to cool food products from 140 °F to 40 °F within four hours. (CCR, Title 20, section 1602) DOE seeks comment on whether there is equipment that is not a beverage merchandiser or beverage cooler, but that would meet the pull-down temperature application definitions.

Issue 27: DOE requests comment on whether definitions are needed for blast chillers and blast freezers to further delineate the equipment subject to the DOE test procedures and standards. If definitions are needed, DOE requests comment on the appropriate definitions for blast chillers and blast freezers, including how to differentiate such

equipment from CRE currently subject to testing and compliance with DOE's energy conservation standards.

DOE is not aware of any existing test methods for assessing the energy performance of equipment generally considered blast chillers and blast freezers. ASHRAE has established a standard project committee ("SPC") to consider the development of an industry test standard for this equipment: SPC 220P, *Method of Testing for Rating Small Commercial Blast Chillers, Chiller-Freezers, and Freezers*.⁹ DOE is participating in this process and will consider referencing publicly available industry standards as may be appropriate in any future test procedure rulemaking. DOE is requesting information on typical blast chiller and blast freezer operation to evaluate any eventual test methods available for this equipment.

Issue 28: DOE requests comment and supporting data on the typical ambient conditions experienced by blast chillers and blast freezers.

Issue 29: DOE requests comment and supporting data on the typical usage settings for blast chillers and blast freezers and how different set-point modes affect energy performance. For units with multiple temperature settings within the refrigerator or freezer temperature range, DOE requests comment on which setting is appropriate for testing. Additionally, for units with settings that affect the pull-down duration, DOE requests comment on whether the fastest or slowest setting (or any other setting if more than two settings are provided) should be used for testing.

3. Chef Bases and Griddle Stands

DOE defines "chef base or griddle stand" as CRE that is designed and marketed for the express purpose of having a griddle or other cooking appliance placed on top of it that is capable of reaching temperatures hot enough to cook food. 10 CFR 431.62. In this RFI, DOE is requesting information and feedback regarding definitions and test procedures for chef bases and griddle stands.

As discussed in the April 2014 Final Rule, the explicit categorization of griddle stands is meant to accommodate equipment that experiences temperatures exceeding 200 °F. 79 FR 22278, 22282. However, DOE notes that the current definition for chef bases and griddle stands does not specify a quantitative means for determining the

equipment that meets the definition, such as a temperature rating for cooking appliances placed on top of chef bases and griddle stands or specifications for the refrigeration systems to differentiate this equipment from typical CRE. Also, the DOE test procedure does not specify unique temperature test conditions for this equipment.

Issue 30: DOE requests comment on whether the definition for chef bases and griddle stands should be modified to include a specific temperature requirement for cooking appliances placed on top of chef bases and griddle stands, or other such specification. Specifically, DOE requests feedback on a quantifiable characteristics of chef bases and griddle stands that differentiate this equipment from other CRE. This includes information on appropriate temperature ranges and refrigeration system characteristics that could be used to classify equipment as chef bases and griddle stands.

DOE stated in the April 2014 Final Rule that chef bases and griddle stands are able to be tested according to the DOE test procedure, but their refrigeration systems require larger compressors to provide more cooling capacity per storage volume than equipment with compressors that are appropriately sized for conventional CRE and more typical room temperature conditions. As a result, this equipment tends to consume more energy than similarly sized, conventional CRE models. 79 FR 22278, 22281–22282. Although this equipment can be tested using DOE's current test procedure, the test room temperature conditions specified in DOE's test procedure may not represent the conditions experienced by chef bases and griddle stands in the field, due to the cooking equipment installed on top of such equipment. Specifically, the current CRE test procedure may not appropriately specify installation and setup for chef bases and griddle stands to reflect real-world conditions.

Issue 31: DOE requests comment on whether modifications to the current CRE test procedure would be appropriate for testing chef bases and griddle stands to better represent real-world use conditions. DOE specifically requests supporting data on the time per day that top-mounted cooking equipment is active, as well as typical temperatures of the cooking equipment when active, to gain an understanding of the magnitude of the resulting thermal loads. DOE also requests comment on whether the existing DOE test procedure is appropriate for measuring the energy use of this equipment.

4. Mobile Refrigerated Cabinets

DOE does not currently define or specify test procedures for other types of refrigerated holding and serving equipment such as certain mobile refrigerated cabinets. As discussed in the April 2014 Final Rule, DOE determined that such other types of refrigerated holding and serving equipment meet the definition of CRE and could be subject to future test procedures and energy conservation standards. 79 FR 22278, 22281. Specifically, mobile refrigerated cabinets chill the refrigerated compartment before being unplugged from power and taken to a remote location to hold food products while maintaining cooling. Such equipment meets the definition of CRE as defined at 10 CFR 431.62; however, unlike most typical CRE, mobile refrigerated cabinets are not continuously connected to a power supply. To better distinguish mobile refrigerated cabinets from other defined categories of CRE, DOE is considering developing definitions for this equipment.

Issue 32: DOE seeks information on the design features and operating characteristics of mobile refrigerated cabinets that would differentiate this equipment from other CRE or refrigerated salad bars, buffet tables, and preparation tables.

In addition to definitions, DOE is considering whether to develop a test procedure for mobile refrigerated cabinets. The operating conditions, installation locations, and usage characteristics for this equipment are likely very different compared to typical CRE. For example, as discussed, mobile refrigerated cabinets are not continuously connected to a power supply and may not have typical door openings for user access. To determine appropriate test procedures to evaluate the energy consumption of this equipment, DOE is requesting information on any characteristics of their operation. DOE is not aware of any industry standards that address performance of mobile refrigerated cabinets.

Issue 33: DOE requests comment on what test conditions (e.g., temperature, moisture content) would be appropriate in a potential test procedure for mobile refrigerated cabinets, given that this equipment often operates in unique conditions and applications. DOE additionally requests comment on appropriate specifications for door openings, stabilization and test periods, and installation configurations for mobile refrigerated cabinets (including representative operating times when

⁹ See <https://www.ashrae.org/technical-resources/standards-and-guidelines/project-committee-interim-meetings>.

connected and disconnected from a power supply). DOE seeks any data describing how these units are used in the field to help inform potential appropriate test conditions and procedures.

5. Additional Covered Equipment

DOE understands that there may be additional equipment available on the market that meet the definition for CRE, but otherwise do not meet the definitions for the existing equipment classes or additional equipment categories described in this section. One such example may be a unit used to chill and dispense condiments—for example cream in a coffee shop. Such units would meet the general CRE definition but may have different operation and customer use compared to equipment covered under the existing CRE equipment categories (e.g., fewer door openings only for re-loading the product).

Issue 34: DOE requests feedback from interested parties on what other CRE may be available on the market that would require separate equipment category definitions and test procedures. Specifically, DOE seeks information on the relevant equipment features and utilities that would require separate equipment categories, as well as the impact of those features and utilities on energy use and whether the current test procedure would provide results of those impacts. DOE also requests any available information on potential definitions, test procedures, and usage data (specifically, how the typical daily energy use of the unique design compares to energy use of a unit of the most similar CRE equipment class) for these equipment categories.

Issue 35: DOE also requests comment on whether it should establish a definition for “other refrigerated holding and serving equipment” to clearly delineate equipment not currently subject to DOE’s test procedure. DOE seeks feedback on an appropriate definition, and on the types of equipment it should cover.

Furthermore, DOE understands that there may be CRE that are currently categorized into existing equipment classes but may require different test requirements to reflect typical field usage. One example may be CRE that are typically used in cafeteria settings to store and provide access to cartons of milk, often referred to as “milk coolers.” Milk coolers may have longer door openings during a relatively short period of the day (i.e., “lunch hour”). Another such example may be CRE that are specifically designed to only operate outdoors. Such units may operate in

different real-world ambient conditions compared to the other CRE (and the DOE test procedure). Similarly, unique shelves or loading configurations may require additional test instructions. For example, the DOE test procedure loading requirements may not be appropriate (or possible) for floral display merchandisers with unique shelf setups.

Issue 36: DOE requests feedback from interested parties on whether any additional or different test requirements are needed for CRE that meet the definitions for the existing equipment classes but may have sufficiently unique applications from other equipment in the same class. Specifically, DOE seeks information on how these requirements should be addressed in the test procedure and how the equipment’s typical usage in the field is different than other CRE within the respective equipment class. DOE also requests comment and information on how it should be determined whether alternate test conditions should apply.

Issue 37: DOE also requests comment on whether DOE could further clarify the use of supplemental test instructions to address alternate testing requirements for specific CRE applications in order to provide more representative results.

D. Harmonization of Efficiency Standards and Testing With NSF 7–2019 Food Safety

NSF International (“NSF”) ¹⁰/ANSI 7–2019, “Commercial Refrigerators and Freezers,” (“NSF 7–2019”) establishes minimum food protection and sanitation specifications for the materials, design, manufacture, and performance of commercial refrigerators and freezers and their related components. The current CRE test procedure allows Type I (designed to operate in 75 °F ambient conditions) and Type II (designed to operate in 80 °F ambient conditions) display refrigerators to be tested at NSF conditions, provided that these conditions result in higher energy consumption than the conditions specified by the DOE test procedure. Appendix B, section 2.3. To that end, the ambient temperature may be higher, but not lower than the DOE test condition; and the IAT may be lower, but not higher, than that measured at the DOE ambient test condition. *Id.* The test conditions, and possible different thermostat settings, under NSF 7–2019 may result in measured energy use that is more representative of average use in

applications for which users prioritize food safety over energy efficiency. Permitting the use of the NSF 7–2019 test conditions may also reduce testing burden for manufacturers.

Issue 38: To ensure further that the DOE test procedure is appropriately representative, and to potentially decrease manufacturer test burden, DOE requests comment on ways in which the DOE test procedure may be modified to better harmonize with NSF 7–2019, if appropriate. DOE specifically requests comment on potential test requirements related to food safety that could be specified to ensure that equipment is tested as it would operate in the field.

E. Dedicated Remote Condensing Units

DOE is also aware of remote condensing CRE models where specific dedicated condensing units are intended for use with specific refrigerated cases. DOE has identified such equipment through manufacturer literature, installation instructions, and vendor information treating the entire system as a single model. In many of these situations, the remote condensing units are intended to be installed on or near the refrigerated case within the same conditioned space. In other situations, the remote condensing units are intended to be installed outdoors, but the refrigerated case is intended to be used specifically with the designated remote condensing unit.

For this equipment, the combined refrigerated case and condensing unit refrigeration system would effectively operate as if it were a CRE with a self-contained condensing unit. Under the current DOE test procedure, remote CRE energy consumption is determined from the energy use of components in the refrigerated case plus a calculated compressor energy consumption based on the enthalpy change of refrigerant supplied to the case at specified conditions. The compressor energy use calculation is based on typical reciprocating compressor energy efficiency ratios (“EERs”) at a range of operating conditions. See Table 1 in AHRI 1200–2010. For CRE used with dedicated condensing units, the actual compressor used during normal operation is known (i.e., the compressor in the dedicated condensing unit). Accordingly, testing the whole system using the same approach as required for a self-contained CRE may produce energy use results that are more representative of how this equipment actually operates in the field. Additionally, testing such a system as a complete system rather than using the test procedures for remote condensing units may be less burdensome because

¹⁰ Founded in 1944 as the National Sanitation Foundation, the organization changed its name to NSF International in 1990.

it would not require use of a test facility capable of maintaining the required liquid and suction line refrigerant conditions as currently required for testing remote CRE (*i.e.*, the refrigerant conditions consistent with the ASHRAE 72–2005 requirements and at the conditions necessary to maintain the appropriate case temperature for testing).

Issue 39: DOE seeks feedback on whether CRE with dedicated remote condensing units should be tested to evaluate the performance of the paired condensing unit and refrigerated case, rather than assuming a condensing unit EER as specified in the AHRI 1200 standards.

Issue 40: DOE requests information on how to identify whether testing with a dedicated remote condensing unit is appropriate for a particular system (rather than the typical remote CRE testing under the existing approach). For example, such testing could be required only when manufacturers specify specific dedicated remote condensing units for use with a remote refrigerated case.

Issue 41: DOE requests comment on appropriate test installations and conditions for testing CRE with paired remote condensing units. For example, both the refrigerated case and dedicated remote condensing unit could be installed within the same conditioned space, resulting in a test similar to that required for CRE with self-contained condensing units.

Refrigerated cases do not always specify dedicated remote condensing units with which to be matched. Having performance information for both the refrigerated cases and separate dedicated remote condensing units would allow users to compare the performance of both parts of the system when matched.

Issue 42: DOE also requests comment on whether, and if so how, users of CRE consider the energy performance of the system in instances in which a specific dedicated remote condensing unit is not identified for a refrigerated case. DOE requests comment on potential approaches to evaluate the energy performance of dedicated remote condensing units independent of their use with specific refrigerated cases.

F. Test Procedure Clarifications and Modifications

1. Defrost Cycles

The test period requirements in ASHRAE 72–2005, incorporated by reference in the current CRE test procedure, and in ASHRAE 72–2018 require starting the 24-hour test period

with a defrost after steady-state conditions are achieved.¹¹ This method introduces a degree of variability in the measured energy consumption when the 24-hour period does not end at the end of a complete defrost cycle (the period from one defrost to the next) (*i.e.*, the test period captures a portion of a defrost cycle rather than complete defrost cycles). Typically, if multiple complete defrost cycles occur within the 24-hour period, the impact of capturing partial defrost cycles is small. Similarly, if the defrost cycle duration is slightly greater than 24-hours, the impact of capturing a partial defrost cycle will be small. However, the impact may be more substantial if the defrost cycle duration is very long (*i.e.*, multiple days between defrost) or if the defrost cycle is slightly less than 24 hours (*i.e.*, the test period would capture two defrost occurrences but only one period of “normal” operation between defrosts). DOE also notes that ASHRAE 72–2005 does not have any provisions for addressing the possibility of CRE with variable defrost control schemes (*i.e.*, defrosts that may be triggered based on conditions or other parameters rather than only a timer) or CRE with no automatic defrost (*i.e.*, manual defrost).

DOE has addressed similar issues in the test procedures for consumer refrigeration products. The test procedures for those products apply a two-part test period (one period for steady-state operation and one period to capture events related to the defrost cycle) to account for defrost energy consumption for products with long defrost cycle durations or with variable defrost control. The energy use calculations then weight the performance from each test period based on the known compressor runtime between defrosts or based on a calculated average time between defrosts in field operation that is based on the control parameters for variable defrosts. See appendices A and B to subpart B of 10 CFR part 430.

Additionally, DOE has addressed testing of certain commercial units that do not have automatic defrost in a waiver granted to AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. (“AHT”) published on October 30, 2018. 83 FR 54581. For basic models subject to the waiver the test period begins after steady state conditions occur (instead of beginning with a defrost cycle) and that the door-opening period begin 3 hours after the start of

the test (instead of 3 hours after a defrost cycle). 83 FR 54581, 54583. DOE also granted AHT an interim waiver for testing certain models with defrost cycles longer than 24 hours. 82 FR 24330 (May 26, 2017; “May 2017 Interim Waiver”). The interim waiver requires that AHT test the specified models using a two-part test method similar to the method for consumer refrigerators, with the first part capturing normal compressor operation between defrosts, including an 8-hour period of door openings, and the second part capturing all operation associated with a defrost, including any pre-cooling or temperature recovery following the defrost. 82 FR 24330, 24332–24333.

Issue 43: DOE requests comment on the impact of the potential defrost cycle variability and whether the test period should be revised to minimize the effects of defrost cycle duration for certain equipment. DOE additionally requests comment and supporting data on how incorporating a two-part test procedure may impact measured energy consumption, test burden, and repeatability and reproducibility. Additionally, DOE requests information on the availability of equipment with variable defrost control and the control schemes employed in those models, if any are available. DOE requests comment on whether the approach granted to AHT in the May 2017 Interim Waiver may better measure the representative energy use of CRE over complete defrost cycles compared to the current 24-hour test period.

With regard to CRE models with multiple evaporators (and therefore, potentially multiple defrosts) connected to a single or multi-stage condensing unit, ASHRAE 72–2005 does not specify which evaporator should be used to determine the defrost cycle that initiates the test. Additionally, if the defrost cycles for multiple evaporators do not activate at the same time during the test, ASHRAE 72–2005 does not specify which defrost cycle should be used to determine the start of the 24-hour test period. ASHRAE 72–2005 also does not explicitly address the treatment of defrost cycles for multi-compartment CRE models (*i.e.*, hybrid CRE) with different evaporator temperatures and defrost sequences.

The DOE test procedure for consumer refrigeration products also addresses products with multiple evaporators and multiple defrosts. In that test procedure, the second (*i.e.*, defrost) part of the test period is conducted separately for each defrost occurrence. Section 4.2.4 of 10 CFR part 430 subpart B appendix A. Similar to the two-part test described

¹¹ ASHRAE 72–2005 and ASHRAE 72–2018 define steady state as the condition where the average temperature of all test simulators changes less than 0.4 °F from one 24-hour period or refrigeration cycle to the next.

earlier in this section, the energy use calculations weight each individual defrost test period with the steady-state test period using the known compressor runtime between each defrost type or based on a calculated average time between defrosts. Section 5.2.1.5 of 10 CFR part 430 subpart B appendix A.

Issue 44: DOE requests information regarding the types of defrost systems that exist in CRE available on the market and how manufacturers currently select test periods for models with multiple evaporators with non-synchronous defrost cycles. DOE requests comment on any potential modifications that could be made to the CRE test procedure in order to increase representativeness and provide additional detail for testing these units, including whether the two-part approach, as described earlier in this section, would be appropriate.

2. Total Display Area

Section 3.2 of Appendix B provides instructions regarding the measurement of TDA. That section specifies that TDA is the sum of the projected area(s) of visible product, expressed in ft² (*i.e.*, portions through which product can be viewed from an angle normal, or perpendicular, to the transparent area).

For certain CRE configurations, merchandise is not necessarily located at an angle directly normal, or perpendicular, to the transparent area despite the transparent area being intended for customer viewing. For example, for service over counter ice-cream freezers, the ice cream containers may be placed within the chest portion of the refrigerated case, with a glass display panel on the front and glass rear doors located above the merchandise storage area. If the glass display areas are nearly vertical, the ice cream containers may be positioned low enough in the case that they are not at a viewing angle perpendicular to the glass. However, during typical use, customers would stand close enough to the display glass that the ice cream would be visible from other angles not perpendicular to the glass. Accordingly, DOE is considering whether additional TDA instructions are necessary to capture the intended display function of this equipment.

Issue 45: DOE seeks feedback on whether the TDA definition and test instructions should account for display areas in which the merchandise is not at a location normal to the display surface. If so, DOE requests information on how to define the revised display area.

Issue 46: DOE also requests comment on other CRE applications or configurations for which the TDA, as

currently defined, may not adequately represent the display functionality of the equipment.

G. Alternative Refrigerants

DOE's current test procedure for remote condensing CRE requires the estimation of compressor EER from Table 1 of AHRI 1200–2010. The EER ratings in the table are based on performance of reciprocating compressors and were developed based on refrigerants that historically have been commonly used for CRE (*i.e.*, R-404A).

Certain remote CRE installations can use carbon dioxide (“CO₂”) as the refrigerant; however, the existing remote CRE test procedure likely does not address the unique operation for these systems. For example, the current DOE test procedure requires an inlet refrigerant liquid temperature of 80 °F with a saturated liquid pressure corresponding to a condensing temperature of 89.6 °F to 120.2 80 °F. See ASHRAE 72–2005, sections 4.3.2 and 4.3.3. CO₂ has a critical point of 87.8 °F and 1,070 pounds per square inch (“psi”), above which it is a supercritical fluid. Accordingly, CO₂ cannot be a liquid at the specified condensing temperature conditions (*i.e.*, it would either be a gas or supercritical fluid, depending on pressure). Additionally, CO₂ systems typically include multiple stages of compression and cooling, resulting in liquid supplied to the refrigerant cases at conditions not necessarily defined by the typical condensing unit conditions. DOE has recently granted a Decision and Order to address similar CO₂ operating conditions for testing walk-in cooler and walk-in freezer unit coolers. 86 FR 14487 (March 19, 2021). That Decision and Order approach requires liquid inlet saturation temperature and liquid inlet subcooling of 38 °F and 5 °F, respectively. 86 FR 14487, 14489. The Decision and Order also maintains the existing compressor energy consumption determination based on an approach consistent with the CRE remote calculations using AHRI 1200–2010 (the walk-in requirements instead refer to the walk-ins rating standard, AHRI 1250–2009, which includes the same EER table as AHRI 1200–2020). *Id.*

Issue 47: DOE requests information on the typical conditions for remote CRE intended for use with CO₂ refrigerant. DOE requests comment and data on the applicability of the EER values in Table 1 of AHRI 1200–2010 to the typical compressor EERs for CO₂ refrigerant systems.

Issue 48: DOE also requests information and supporting data on

whether the existing test procedure is appropriate for any other alternative refrigerants that may be used for remote CRE. DOE requests feedback on whether the operating conditions specified in ASHRAE 72–2005 or the standardized EER values in Table 1 of AHRI 1200–2010 should be revised to account for operation with any other alternative refrigerants. DOE also requests usage data regarding the range of refrigerants in the remote CRE market.

H. Certification of Compartment Volume

The current certification requirements specified in 10 CFR 429.42 require manufacturers to certify compartment volumes for certain equipment classes of CRE. DOE's current test procedure incorporates by reference AHAM HRF-1–2008 to measure compartment volume. DOE acknowledges that manufacturers often use computer aided designs (“CAD”) to in designing their equipment. Using the CAD as the basis for determining compartment volumes may be particularly helpful when the geometric designs of the CRE make physical measurements in accordance with AHAM HRF-1–2008 difficult. DOE is considering whether it should allow CRE manufacturers to certify compartment volumes using CAD drawings. Currently, DOE's certification requirements in 10 CFR part 429 include provisions for certifying volume for basic models of consumer refrigeration products, commercial gas-fired and oil-fired instantaneous water heaters, and hot water supply boilers using CAD drawings. 10 CFR 429.72(c), (d), and (e).

Issue 49: DOE requests comment on whether allowing manufacturers to certify compartment volumes for CRE basic models using CAD drawings would introduce any testing or certification issues. DOE also seeks information on the extent to which the use of CAD drawings may reduce manufacturer test burden.

I. Test Procedure Waivers

A person may seek a waiver from the test procedure requirements for a particular basic model of a type of covered equipment when the basic model for which the petition for waiver is submitted contains one or more design characteristics that: (1) Prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1).

DOE has granted test procedures waivers for the current CRE test procedure. On September 12, 2018, DOE published a test procedure for ITW Food Equipment Group, LLC ("ITW") for testing specified grocery and general merchandise system (*i.e.*, refrigerated storage allowing for order storage and customer pickup) basic models which have unique operating characteristics including floating suction temperatures for individual compartments, different typical door-opening cycles, and a high-temperature "ambient" compartment. 83 FR 46148. As discussed in section II.E.1, DOE has granted AHT a test procedure waiver to allow for testing specified basic models that do not have defrost cycle capability when operated in freezer mode. 83 FR 54581. Additionally, also discussed in section II.E.1, DOE has granted AHT an interim test procedure waiver for testing certain models with defrost cycles longer than 24 hours. 82 FR 24330.

The test procedure waivers for these CRE basic models have addressed provisions in the test procedures that would evaluate subject basic models in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data.

Issue 50: DOE requests feedback on whether the test procedure waiver approaches for the ITW and AHT petitions are generally appropriate for testing basic models with these features.

III. Submission of Contents

DOE invites all interested parties to submit in writing by the date specified in the **DATES** heading, comments and information on matters addressed in this RFI and on other matters relevant to DOE's early assessment of whether an amended test procedure for CRE is warranted and if so, what such amendments should be.

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

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

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

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

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

any form of encryption and, if possible, they should carry the electronic signature of the author.

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

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

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

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

Signing Authority

This document of the Department of Energy was signed on June 4, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal**

Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 7, 2021.

Treena V. Garrett,

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

[FR Doc. 2021-12160 Filed 6-10-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0460; Project Identifier MCAI-2020-01620-R]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model AS355E, AS355F, AS355F1, and AS355F2 helicopters. This proposed AD was prompted by multiple fatigue cracks in power turbine (PT) 3rd stage wheels. This proposed AD would require revising the existing Rotorcraft Flight Manual (RFM) for your helicopter and installing a placard. 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 July 26, 2021.

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

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus Helicopters service information identified in this NPRM,

contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. For Rolls-Royce service information identified in this NPRM, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; or at <https://www.rolls-royce.com/contact-us.aspx>. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0460; 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, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Michael Hughlett, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email michael.hughlett@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2021-0460; Project Identifier MCAI-2020-01620-R" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Michael Hughlett, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email michael.hughlett@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0266, dated December 8, 2020 (EASA AD 2020-0266), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale Model AS 355 E, AS 355 F, AS 355 F1, and AS 355 F2 helicopters, all serial numbers, if equipped with Rolls-Royce Corporation (formerly Allison) (RRC) engine Model 250-C20F. EASA advises of multiple fatigue cracks in PT 3rd stage wheels. Investigation has revealed that crack initiation at the hub trailing edge could occur in low-cycle fatigue and progress in high-cycle fatigue up to separation of the blade. According to EASA, RRC has determined that detrimental vibrations could occur within a particular range of turbine speeds, below the normal operating range of this helicopter, which are a potential contributing factor to these failures. This condition, if not addressed, could result in fatigue failure of a PT 3rd stage wheel, and subsequent loss of engine power, release of debris and damage to the helicopter, and loss of control of the helicopter.

Accordingly, EASA AD 2020-0266 requires revising the Normal Procedures

Section of the applicable RFM or RFM supplement, informing flight crews, and installing a placard in full view of both pilots.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. AS355–71.00.21, Revision 1, dated November 10, 2020. This service information specifies replacing a note with a caution in the Flight Manual to not allow rotor speed to stagnate between 279 and 374 revolutions per minute (RPM) during engine acceleration. This service information also specifies procedures for making and installing a label (placard) for the pilot and co-pilot to avoid 71–95% N2 steady-state speed (avoid operation at 279–374 RPM).

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.

Other Related Service Information

The FAA also reviewed Rolls-Royce Alert Commercial Engine Bulletin A–1400, Revision 7, dated January 10, 2019. This service information specifies the speed avoidance range and operating procedures depending on the PT wheel part number installed.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing RFM for your helicopter to replace a note with a caution to not allow rotor speed to stagnate between 279 and 374 RPM. This proposed AD would also require installing a placard to avoid 71–95% N2 steady-state speed (avoid operation at 279–374 RPM).

Differences Between This Proposed AD and the EASA AD

EASA AD 2020–0266 requires compliance within 50 flight hours or 30 days, whichever occurs first after the effective date of its AD, whereas this

proposed AD would require compliance within 50 hours time-in-service after the effective date of this AD instead.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 29 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the existing RFM for your helicopter would take about 0.25 work-hour for an estimated cost of \$21 per helicopter and \$609 for the U.S. fleet. Installing a placard would take about 0.25 work-hour and parts would cost a nominal amount, for an estimated cost of \$21 per helicopter and \$609 for the U.S. fleet.

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, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2021–0460; Project Identifier MCAI–2020–01620–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 26, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS355E, AS355F, AS355F1, and AS355F2 helicopters, certificated in any category, with a Rolls-Royce Corporation (formerly Allison) engine Model 250–C20F installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by multiple fatigue cracks in power turbine (PT) 3rd stage wheels. The FAA is issuing this AD to prevent fatigue failure of a PT 3rd stage wheel. The unsafe condition, if not addressed, could result in loss of engine power, release of debris and damage to the helicopter, and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 50 hours time-in-service after the effective date of this AD:

- (1) Revise the existing Rotorcraft Flight Manual (RFM) for your helicopter by inserting the page applicable to your helicopter model and version from Appendix 4.A. through D., of Airbus Helicopters Alert Service Bulletin No. AS355–71.00.21, Revision 1, dated November 10, 2020 (ASB AS355–71.00.21 Rev 1). Inserting a different document with information identical to that in Appendix 4.A. through D., of ASB AS355–

71.00.21 Rev 1, as applicable to your helicopter model and version, is acceptable for compliance with the requirement of this paragraph. The action required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9(a)(1) through (4) and § 91.417(a)(2)(v). The record must be maintained as required by § 91.417, § 121.380, or § 135.439.

(2) Install a placard in full view of the pilot and co-pilot by following the Accomplishment Instructions, paragraph 3.B., of ASB AS355–71.00.21 Rev 1.

Note 1 to paragraph (g)(2): Airbus Helicopters service information refers to a placard as a label.

(h) Special Flight Permits

Special flight permits are permitted so long as continuous engine operation between 71 and 88% N2 is avoided.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(j) Related Information

(1) For more information about this AD, contact Michael Hughlett, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email michael.hughlett@faa.gov.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323;

fax (972) 641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2020-0266, dated December 8, 2020. You may view the EASA AD on the internet at <https://www.regulations.gov> in Docket No. FAA-2021-0460.

Issued on June 6, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-12226 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206 and 1241

[Docket No. ONRR-2020-0001; DS63644000 DRT000000.CH7000 212D1113RT]

RIN 1012-AA27

ONRR 2020 Valuation Reform and Civil Penalty Rule: Notification of Proposed Withdrawal

AGENCY: Office of Natural Resources Revenue (“ONRR”), Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: ONRR is proposing to withdraw the final rule entitled “ONRR 2020 Valuation Reform and Civil Penalty Rule” (“2020 Rule”). This action opens a 60-day comment period to allow interested parties to comment on ONRR’s proposed withdrawal of the 2020 Rule.

DATES: The final rule published on January 15, 2021, at 86 FR 4612, which was delayed at 86 FR 9286 on February

12, 2021, and 86 FR 20032 on April 16, 2021, is proposed to be withdrawn. To be assured consideration, comments must be received at one of the addresses provided below by 11:59 p.m. EST on August 10, 2021.

ADDRESSES: You may submit comments to ONRR using one of the following two methods. Please reference the Regulation Identifier Number (“RIN”) for this action, “RIN 1012-AA27,” in your comment:

- *Electronically via the Federal eRulemaking Portal:* Please visit <https://www.regulations.gov>. In the Search Box, enter Docket ID “ONRR-2020-0001” and click “search” to view the publications associated with the docket folder. Locate the document with an open comment period and then click “Comment.” Follow the instructions to submit your public comments prior to the close of the comment period.

- *Email Submissions:* Please submit your comments via email at ONRR_RegulationsMailbox@onrr.gov with “RIN 1012-AA27” listed in the subject line of your message. Email submissions must be postmarked on or before the close of the comment period.

Instructions: All comments must include the agency name and docket number or RIN for this rulemaking. All comments, including any personal identifying information or confidential business information contained in a comment, will be posted without change to <https://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and locate the docket folder by searching the Docket ID (ONRR-2020-0001) or RIN number (RIN 1012-AA27).

FOR FURTHER INFORMATION CONTACT: For questions, contact Luis Aguilar, Regulatory Specialist, at (303) 231-3418 or by email at ONRR_RegulationsMailbox@onrr.gov.

SUPPLEMENTARY INFORMATION:

TABLE OF ABBREVIATIONS AND COMMONLY USED ACRONYMS IN THIS PROPOSED RULE

Abbreviation	What it means
2016 Valuation Rule	ONRR’s Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform Rule, 81 FR 43338 (July 1, 2016).
2016 Civil Penalty Rule	ONRR’s Amendments to Civil Penalty Regulations, 81 FR 50306 (August 1, 2016).
2017 Repeal Rule	ONRR’s Repeal of the 2016 Valuation Rule, 82 FR 36934 (August 7, 2017).
ALJ	Administrative Law Judge.
APA	Administrative Procedure Act of 1946, as amended.
API	American Petroleum Institute.
BLM	Bureau of Land Management.
BLS	Bureau of Labor Statistics.
BOEM	Bureau of Ocean Energy Management.
BSEE	Bureau of Safety and Environmental Enforcement.
Deepwater Policy	MMS’s May 20, 1999, memorandum entitled “Guidance for Determining Transportation Allowances for Production from Leases in Water Depths Greater Than 200 Meters”.

TABLE OF ABBREVIATIONS AND COMMONLY USED ACRONYMS IN THIS PROPOSED RULE—Continued

Abbreviation	What it means
DOI	U.S. Department of the Interior.
E.O.	Executive Order.
FERC	Federal Energy Regulatory Commission.
2020 Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule, 86 FR 4612 (January 15, 2021).
First Delay Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date and Request for Public Comment, 86 FR 9286 (February 12, 2021).
FOGRMA	Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701, <i>et seq.</i>
GOM	Gulf of Mexico.
MLA	Mineral Leasing Act of 1920, 30 U.S.C. 181, <i>et seq.</i>
MMS	Minerals Management Service.
NEPA	National Environmental Policy Act of 1970.
NGL	Natural Gas Liquids.
OCS	Outer Continental Shelf.
OCSLA	Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331, <i>et seq.</i>
ONRR	Office of Natural Resources Revenue.
Proposed 2020 Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule, Proposed Rule, 85 FR 62054 (October 1, 2020).
Second Delay Rule	ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date, 86 FR 20032 (April 16, 2021).
Secretary	Secretary of the U.S. Department of the Interior.
S.O.	Secretarial Order.

I. Introduction

A. Statutory Authority

Through the enactment of various mineral leasing laws, Congress authorized the Secretary to issue and administer leases to allow for the exploration, development, and production of mineral resources from Federal and Indian lands and the OCS. These laws include, for onshore lands, the MLA, for offshore lands, the OCSLA, and for Indian and allotted lands, 25 U.S.C. 396, *et seq.* The Secretary has delegated the statutory authority to lease, permit, and inspect mineral extraction activities on those lands to several bureaus and offices.

The Secretary is also responsible for collecting, accounting for, and disbursing royalties and other financial obligations related to the leasing, production, and sale of minerals from Federal and Indian lands. Mineral leasing laws, regulations, and lease terms establish royalty rates and other obligations that a lessee must pay to the United States or Indian lessor. Relevant to this rulemaking, *see, e.g.*, 25 U.S.C. 396a–g, 400a; 30 U.S.C. 207(a), 226(b)(1) (MLA); 43 U.S.C. 1337(a)(1) (OCSLA); 25 CFR 211.43; 43 CFR 3103.3–1, 43 CFR 3473.3–2.

Congress enacted FOGRMA to further clarify and establish the Secretary's responsibilities with respect to royalty management. Through FOGRMA, Congress directed the Secretary “to improve methods of accounting for such royalties and payments” and required “the development of enforcement practices that ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the United

States and Indian lessors and those inuring to the benefit of States.” 30 U.S.C. 1701(a)(3) and (b)(3).

Over the years, royalty management responsibilities have been transferred within DOI and in 2010, following the reorganization of MMS, ONRR was created. The Secretary delegated authority to ONRR to carry out its responsibilities specific to “royalty and revenue collection, distribution, auditing and compliance, investigation and enforcement, and asset management for both onshore and offshore activities.” S.O. 3299, Sec. 5 (August 29, 2011); *see also* S.O. 3306 (September 30, 2010). Pursuant to FOGRMA, the mineral leasing acts, and the authority delegated by the Secretary, ONRR has adopted regulations specifying the methods to be used to determine the value of Federal and Indian mineral production for royalty purposes.

ONRR's responsibilities are distinct from other DOI offices and bureaus and pertain specifically to the collection, verification, and disbursement of royalty revenue realized from production of natural resources on Federal and Indian lands and the OCS. *See* 30 CFR 1201.100.

FOGRMA and the mineral leasing laws grant the Secretary broad rulemaking authority to carry out and accomplish the purposes set forth in the governing statutes. *See* 30 U.S.C. 189 (MLA); 30 U.S.C. 1751 (FOGRMA); and 43 U.S.C. 1334 (OCSLA). In turn, the Secretary delegated rulemaking authority specific to ONRR's portfolio of responsibilities to ONRR. *See* S.O. 3299, sec. 5 and S.O. 3306, sec. 3–4.

B. Rulemaking History

1. The 2020 Proposed Rule

On October 1, 2020, ONRR published the Proposed 2020 Rule. The Proposed 2020 Rule proposed to amend certain regulations that inform the manner in which ONRR values oil and gas produced from Federal leases for royalty purposes; values coal produced from Federal and Indian leases for royalty purposes; and assesses civil penalties for violations of certain statutes, regulations, lease terms, and orders associated with mineral leases. The Proposed 2020 Rule stated its purposes were to: Align the 2016 Valuation Rule with certain E.O.s issued after the 2016 Valuation Rule's publication date; address some of the amendments in the 2016 Valuation Rule asserted to be controversial and problematic; simplify processes and provide early clarity regarding royalties owed; better explain ONRR's civil penalty practices; and return certain provisions to the framework that had existed for decades prior to the 2016 Valuation Rule and 2016 Civil Penalties Rule.

The 60-day comment period for the Proposed 2020 Rule closed on November 30, 2020. ONRR received comments from numerous industry members, trade associations, public interest groups, members of Congress, members of the public, and State and local entities. ONRR received 36 unique comment submissions totaling to 40,456 pages of comment materials, of which 38,150 pages were a one-page form comment.

2. The 2020 Rule

On January 15, 2021, 46 days after the close of the comment period, ONRR published the 2020 Rule. The 2020 Rule adopted amendments on 15 topics, generally summarized as:

1. Deepwater gathering—allowing certain gathering costs to be deducted as part of a lessee's transportation allowance for Federal oil and gas produced on the OCS at water depths greater than 200 meters.

2. Extraordinary processing allowances—allowing a lessee to apply for approval to claim an extraordinary processing allowance for Federal gas in situations where the gas stream, plant design, and/or unit costs are extraordinary, unusual, or unconventional relative to standard industry conditions and practice.

3. Default provision—removed the default provision and references thereto from the Federal oil and gas and Federal and Indian coal regulations. The default provision established criteria limiting how ONRR will exercise the Secretary's authority to establish royalty value when typical valuation methods are unavailable, unreliable, or unworkable.

4. Misconduct—removed the misconduct definition from 30 CFR 1206.20.

5. Signed contracts—removed the requirement that a lessee have contracts signed by all parties.

6. Citation to legal precedent—eliminated the requirement for a lessee to cite legal precedent when seeking a valuation determination.

7. Arm's-length valuation option—adopted an index-based valuation option for arm's-length Federal gas sales.

8. Change in indices to be used in index-based valuation options—changed from the high index price to the average index price.

9. Standard deduction for transportation allowance—amended the standard deduction included in the index-based valuation method to reflect more recent average transportation cost data.

10. Valuation of coal based on electricity sales—removed the requirement to value certain Federal and Indian coal based on the sales price of electricity.

11. Coal cooperative—removed the definition of “coal cooperative” and the method to value sales between members of a “coal cooperative” for Federal and Indian coal.

12. Facts considered in penalizing payment violations—modified ONRR's civil penalty regulations to specify that ONRR considers unpaid, underpaid, or

late payment amounts in the severity analysis for payment violations only.

13. Consideration of aggravating and mitigating circumstances—modified ONRR's civil penalty regulations to specify that ONRR may consider aggravating and mitigating circumstances when calculating the amount of a civil penalty.

14. Conforming civil penalty regulations to court decision—removed a provision permitting an ALJ to vacate a previously-granted stay of an accrual of penalties if the ALJ later determines that a violator's defense to a notice of noncompliance was frivolous.

15. Non-substantive corrections—amended various regulations by making non-substantive corrections.

The 2020 Rule did not adopt amendments on three topics discussed in the Proposed 2020 Rule:

1. Regulatory caps on transportation allowances for Federal oil and gas. *See* 86 FR 4613.

2. Regulatory caps on processing allowances for Federal gas. *See* 86 FR 4614.

3. Shallow water gathering. *See* 86 FR 4614.

The effective date of the 2020 Rule was originally February 16, 2021. For amendments to 30 CFR part 1206 only, the 2020 Rule established a compliance date of May 1, 2021.

3. The First Delay Rule

On January 20, 2021, the Assistant to the President and Chief of Staff issued a memorandum entitled “Regulatory Freeze Pending Review” which, along with the Office of Management and Budget (“OMB”) January 20, 2021, Memorandum M–21–14, directed agencies to consider a delay of the effective date of rules published in the **Federal Register** that had not yet become effective and to invite public comment on issues of fact, law, and policy raised by those rules (86 FR 7424, January 28, 2021).

On February 12, 2021, ONRR published the First Delay Rule which initially delayed by 60 days the effective date of the 2020 Rule, opened a 30-day comment period on the facts, law, and policy underpinning the 2020 Rule, as well as on the impact of a delay in the effective date of the 2020 Rule. In response, ONRR received 13 comment submissions totaling to 1,339 pages of comment materials, many of which were submitted by the same organizations that had commented on the Proposed 2020 Rule.

4. The Second Delay Rule

After the close of the First Delay Rule's comment period, ONRR

determined that an additional delay of the 2020 Rule's effective date was needed. Thus, on April 16, 2021, ONRR published a second final rule which further delayed the effective date until November 1, 2021 (the “Second Delay Rule”).

The Second Delay Rule listed 15 potential defects or shortcomings identified by ONRR in its initial reexamination of the 2020 Rule and in comments received in response to the First Delay Rule. 86 FR 20032. It also addressed public comments received on the impacts of delay of the effective date of the 2020 Rule.

II. Basis for Proposed Action

ONRR is proposing to withdraw the 2020 Rule because the process used for its adoption arguably was without observance of procedure required by law, as well as in excess of ONRR's statutory authority. *See* 5 U.S.C. 706(2)(C), (D). While a complete withdrawal of the 2020 Rule may be warranted, ONRR requests public comment on potential alternatives in Section IV of this rule. For example, alternative outcomes following this proposed rule's notice could include: Allowing the 2020 Rule to go into effect, a withdrawal limited to some or all of the 2020 Rule's amendments to 30 CFR part 1206, a withdrawal limited to some or all of the 2020 Rule's revenue-impacting amendments, a withdrawal limited to some or all of the 2020 Rule's amendments to part 1241, or some combination thereof. ONRR acknowledges the importance of public participation as part of the rulemaking process. As such, this rule explains potential deficiencies in the 2020 Rule and invites public comment on the proposed withdrawal and new findings considered as part of this reevaluation. Following the close of this rule's comment period, ONRR will consider all relevant information submitted through public comment and determine the appropriate course of action.

A. APA Defects That Go to the Entirety of the 2020 Rule

The 2020 Rule may be deficient under the APA for the following reasons.

1. Adequacy of the Comment Period

Though the 2016 Valuation Rule included a public comment period of 120 days, the 2020 Rule included a public comment period of just 60 days. In litigation construing ONRR's reversal of major policies adopted in the 2016 Valuation Rule, the District Court found that ONRR failed to provide meaningful opportunity for comment when it enacted the reversal without a comment

period of commensurate length. Specifically, the District Court found that the 30-day comment period used for the 2017 repeal of the 2016 Valuation Rule was too brief when ONRR had a much longer comment period for the 2016 Valuation Rule—approximately 120 days.¹ Here, though ONRR did allow for more than 30 days of comment on the 2020 Rule, as with the repeal of the 2016 Valuation Rule, ONRR may still have deprived the public of an adequate period within which to comment.

2. Consideration of Alternatives

The Proposed 2020 Rule does not demonstrate that ONRR considered alternatives to the repeal of select regulations adopted in the 2016 Valuation Rule and, to a lesser extent, its 2016 Civil Penalty Rule. For example, the 2020 Rule did not discuss alternatives to the repeal of the definition of misconduct or the requirement of signed contracts, among other less controversial changes. This again resembles ONRR's 2017 attempt to repeal the 2016 Valuation Rule, where the District Court found that ONRR did not discuss alternatives to a full repeal of the 2016 Valuation Rule and explained that an agency must discuss alternatives even if the agency is repealing less than an entire rulemaking.²

¹ *California v. U.S. Dep't of the Interior*, 381 F. Supp. 3d 1153, 1177–78 (N.D. Cal. 2019) (“ONRR’s failure to provide a meaningful opportunity to comment is underscored by the brevity of the comment period. While there is no bright-line test for the minimum amount of time allotted for the comment period, at least one circuit has recognized that 90 days is the ‘usual’ amount of time allotted for a comment period. In cases involving the repeal of regulations, courts have considered the length of the comment period utilized in the prior rulemaking process as [] well as the number of comments received during that time-period. In the instant case, a comparison between the ONRR’s rulemaking process leading to the Valuation Rule and the process used to repeal it exemplifies the ONRR’s failure to provide for a meaningful rulemaking process. . . . In contrast to the years of consideration leading to the promulgation of the Valuation Rule, the ONRR’s actions to repeal it took place in a matter of months. Whereas the ONRR provided a 120-day comment period for the draft Valuation Rule, the ONRR allowed only a 30-day comment period to consider its repeal. . . . Based on the record presented, the Court finds that the ONRR failed to provide meaningful opportunity for comment.” (citations omitted)).

² *Id.* at 1168–69 (“When considering revoking a rule, an agency must consider alternatives in lieu of a complete repeal, such as by addressing the deficiencies individually. In response to the Proposed Repeal, the ONRR received comments suggesting that in lieu of complete repeal of the Valuation Rule, the ONRR should address specific problems ‘separately and not entirely abandon the rule in its entirety.’ The ONRR responded that ‘[t]he cost of implementing the rule and subsequently trying to fix the defects in one or more separate rulemakings would far exceed the cost of repealing

3. Lack of “Reasoned Explanation” for Proposed Rule Denies the Public an Opportunity To Comment

In the Proposed 2020 Rule, ONRR may not have fully explained why it was proposing certain substantive amendments.³ The District Court noted a similar flaw in ONRR’s 2017 proposal to repeal the 2016 Valuation Rule, finding that ONRR did not identify the reasons supporting its proposed repeal.⁴

Specifically, ONRR’s Proposed 2020 Rule may not have fully described the reasons why it was proposing to return to some of the “historical practices” or adopting other changes, including: (1) When production is completed offshore in waters 200 meters and deeper, allowing a lessee to report and claim certain gathering costs in its transportation allowances; (2) extension of index-based valuation to arm’s-length sales of Federal gas; and (3) lowering of the index, from the highest bidweek price to an average bidweek price, for valuation of non-arm’s-length sales of Federal gas. While the Proposed 2020 Rule identified the proposed changes, discussed the anticipated economic impact of the changes, and set forth the language of the proposed amendments, ONRR could have more fully discussed why the changes were being proposed. Moreover, for the changes that were reverting to “historical practices” (*i.e.*, those existing before the 2016 Valuation Rule was adopted), ONRR did not fully explain why it was reverting to practices it had rejected in its last substantive rulemaking. Thus, the Proposed 2020 Rule may not have provided sufficient

and replacing the rule.’ That conclusory statement—unsupported by facts, reasoning or analysis—is legally insufficient.”).

³ Even if ONRR’s failure to fully explain its proposed action only affected the validity of certain amendments, a court may vacate an entire rule if it is not feasible to keep only the valid sections. *See High Country Conservation Advocates v. U.S. Forest Serv.*, 951 F.3d 1217, 1228–29 (10th Cir. 2020) (holding that a court may only partially set aside a regulation if the invalid portion is severable, that is if the severed parts operate entirely independently of one another, and the circumstances indicate the agency would have adopted the regulations even without the faulty provision); *see also Wyoming v. U.S. Dep’t of the Interior*, 493 F. Supp. 3d 1046 (D. Wyo. 2020) (holding that the remainder of the BLM’s rule provisions could not function independently and vacating the entire rule).

⁴ *California*, 381 F. Supp. 3d at 1173–74 (“The Court concludes that, by failing to provide the requisite information to adequately apprise the public regarding the reasons the ONRR was seeking to repeal the Valuation Rule in favor of the former regulations it had just replaced, the ONRR effectively precluded interested parties from meaningfully commenting on the proposed repeal. The Court therefore concludes that Federal Defendants violated the APA by failing to comply with the notice and comment requirement.” (citations omitted)).

notice of the reasons for the substantive proposed changes to be adopted through the 2020 Rule such that the public was not provided with a meaningful opportunity to comment.

4. Failure to Adequately Justify Change in Recently Adopted Policy

At the time the Proposed 2020 Rule was published, the 2016 Valuation Rule had been in force for only seventeen months (from March 29, 2019 when the repeal of the 2016 Valuation Rule was overturned to October 1, 2020) and full compliance with that rule had been delayed by the series of Dear Reporter letters to October 1, 2020. Given that the Proposed 2020 Rule was, in many instances, an attempt to return to the valuation rules that existed prior to the 2016 Valuation Rule, ONRR should have included justifications for the proposed changes in the Proposed 2020 Rule. In addition, ONRR should have explained the inconsistencies between the 2016 Valuation Rule and the amendments described in the Proposed 2020 Rule and, in addition, adequately explained its potential rejection of the position under which the agency and the regulated public had been operating for only a brief period of time.⁵

In considering ONRR’s 2017 attempt to repeal its 2016 Valuation Rule, the District Court similarly concluded that ONRR did not provide “a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.”⁶ Here too, the APA may have been violated by ONRR’s failure to offer a reasoned explanation for the proposed amendments and its failure to describe why it was disregarding the findings in the 2016 Valuation Rule in favor of

⁵ *See* footnote 4.

⁶ *California*, 381 F. Supp. 3d at 1168 (citing *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016)). The District Court further found that, in its 2017 repeal, ONRR completely contradict[ed] its prior findings. Despite its previous, detailed conclusions in support of the Valuation Rule’s approach to valuing non-arm’s-length coal transactions—and dismissing the industry’s criticisms thereof—the ONRR now finds the approach prescribed in the Valuation Rule to be “unnecessarily complicated and burdensome to implement and enforce.” Likewise, in contrast to its prior criticisms of the benchmarks, the ONRR now lauds the benchmark system as “proven and time-tested,” as well as “reasonable, reliable, and consistent.” Although the ONRR is entitled to change its position, it must provide “a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy” The Court finds that the ONRR’s conclusory explanation in the Final Repeal fails to satisfy its obligation to explain the inconsistencies between its prior findings in enacting the Valuation Rule and its decision to repeal such Rule. The ONRR’s repeal of the Valuation Rule is therefore arbitrary and capricious.

Id. at 1167–68 (citations omitted).

reverting to prior policy after only a brief period of time operating under the 2016 Valuation Rule.

Moreover, the justification offered in the 2020 Rule, in some instances, could be interpreted as relying on matters outside of ONRR's primary area of expertise—matters that were not signaled in the proposed rule. Since the explanation for its action was offered only in the 2020 Rule, and not in the Proposed 2020 Rule, members of the public may have been deprived of an opportunity to comment, as they were unlikely to anticipate that ONRR would cite external justification for the 2020 Rule.

B. APA and Other Defects That Go to Portions of the 2020 Rule

Part A above explains four potential defects in the 2020 Rule. In addition to these defects, ONRR also believes it may have promulgated certain amendments in excess of the authority delegated to it, as explained below.⁷ The sum of these defects may warrant withdrawal of the entire 2020 Rule.

Because ONRR is considering alternatives to complete withdrawal of the 2020 Rule, this section provides information regarding additional, amendment-specific problems which may warrant the withdrawal of some but not all of the 2020 Rule. The amendments covered in this Part B are: (1) Deepwater gathering allowances; (2) extraordinary processing allowances; (3) index-based valuation for arm's-length sales; (4) modification of the index price used in index-based valuation; and (5) increasing the reduction to the index price used in index-based valuation to account for transportation expenses. Collectively, these five are referred to as the revenue-impacting provisions of the 2020 Rule.

1. ONRR's Role in Incentivizing Production

Since the 2020 Rule adopted each of these five revenue-impacting amendments to, in part, incentivize production by reducing royalties an oil and gas lessee would otherwise owe the United States, this section begins by discussing incentivization of production before turning to matters specific to

individual revenue-impacting amendments.

a. Secretarial Authorities Delegated to ONRR Do Not Include Incentivizing Production

In response to the Proposed 2020 Rule, some commenters noted that ONRR based the proposed rule on incentivizing or increasing Federal production despite the fact that ONRR has no explicit mandate to increase production. In the 2020 Rule, ONRR disagreed with the commenter and responded by stating that it shared in DOI's goal of managing Federal resources on the OCS. *See* 86 FR 4623. It is true that Congress has established official policy that "the Outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." 43 U.S.C. 1332(3). This broad directive, framed primarily by the overarching requirement that DOI conduct leasing activities "to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government," 43 U.S.C. 1344(a)(4), provides the Secretary with broad discretion to emphasize varying components of OCLSA's objectives. Similarly, with respect to the royalty management program specifically, the Secretary has the authority to "prescribe such rules and regulations as he deems reasonably necessary to carry out this chapter" under FOGPMA, 30 U.S.C. 1751(a).

Notably, however, ONRR has reconsidered its responsibilities and determined that they are much narrower than the 2020 Rule suggested. ONRR was established, together with BOEM and BSEE, to purposefully separate and reassign the responsibilities of the former MMS in order to improve management, oversight, and accountability of activities on the OCS, ensure a fair return to the public from royalty and revenue collection and disbursement activities, and provide independent safety and environmental oversight and enforcement of offshore activities. *See* S.O. 3299 (May 19, 2010) and S.O. 3306 (Sept. 30, 2010). Under these S.O.s, ONRR is specifically responsible for managing royalty and revenue collection, distribution, auditing and compliance, investigation and enforcement, and asset management for both onshore and offshore activities. *Id.* Consistent with the S.O.s, ONRR is primarily responsible for carrying out

the Secretary's duty to "establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner" under 30 U.S.C. 1711(a). Unlike most agencies within DOI, ONRR has no organic statute and the role of ONRR under S.O. 3299 and S.O. 3306 is narrowly focused on the accounting and auditing activities that form the bedrock of ONRR's responsibilities. Thus, questions exist regarding the scope of ONRR's authority and the range of activities that have been assigned or delegated to it.

The need to separate the auditing and accounting responsibilities from the planning and leasing activities was one of the primary stated purposes for the dissolution of the former MMS and the creation of BOEM, BSEE, and ONRR. MMS was divided into the three separate bureaus and offices to separate conflicting missions. *See* <https://www.doi.gov/news/pressreleases/Salazar-Divides-MMSs-Three-Conflicting-Missions>. Among other things, the establishment of ONRR in the Office of the Assistant Secretary for Policy Management and Budget, "centralize[d] the collection and management of revenues from energy development on our public lands and oceans, which strengthens the ability of employees to independently and rigorously carry out their revenue management responsibilities, and ensures better protection of American taxpayer interests." *See* July 15, 2011 Statement of the Director of the Office of Natural Resources Revenue, to the Committee on Natural Resources, House of Representatives, [doi.gov/ocl/hearings/112/OffshoreEnergyAgenciesGould_071511](https://www.doi.gov/ocl/hearings/112/OffshoreEnergyAgenciesGould_071511). Tasking ONRR with incentivizing energy production would seem to be inconsistent with the current delegation of responsibilities between BOEM, BSEE, and ONRR.

Finally, it should be remembered that ONRR's primary functions include ensuring fair return (*i.e.*, fair value) for the public from royalty and revenue collection and disbursement activities. As a result, any decision by ONRR to incentivize or disincentivize production that compromises the attainment of a fair return for the United States would be outside ONRR's primary function.

⁷ *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress."); *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000) ("Regardless of how serious the problem an administrative agency seeks to address, . . . it may not exercise its authority 'in a manner that is inconsistent with the administrative structure that Congress enacted into law.'").

b. The 2020 Rule Failed To Show How It Incentivized Production

In response to the First Delay Rule, one commenter wrote that ONRR revealed for the first time in the 2020 Rule that it evaluated the issue of production impacts using its economic models. The commenter referred to the following language: The “margin of error for estimating this rule’s negligible or marginal impact on actual production is beyond the capability of the Department’s existing models, and the Department does not know of other economic models that are sufficiently sensitive to accurately measure these changes.” 86 FR 4616. The commenter described this language as convoluted.

The commenter interpreted this statement to mean that, using the estimating models available to it, ONRR ultimately determined that the rule would have a “negligible or marginal impact on production” within the margin of error of its models. According to the commenter, ONRR’s statement means the premise for adopting the 2020 Rule—that it would increase production—was false. The commenter also stated that ONRR failed to provide this finding to the public in the Proposed 2020 Rule to allow the public the opportunity to comment on this new information. The commenter asserted that ONRR instead proceeded to adopt the 2020 Rule despite knowing the premise for its rulemaking had been withheld and, moreover, was materially false. The commenter claimed that on this basis alone, the 2020 Rule should be withdrawn.

ONRR rejects the commenter’s assertions that information was withheld in the Proposed 2020 Rule to undermine the public’s opportunity to comment. Agencies routinely add, expand, and revise explanations between proposed and final rules based on public comments and their own continued analysis and search for information. However, ONRR agrees with the commenter that the 2020 Rule ultimately failed to explain or substantiate how it accomplished its stated purpose to incentivize production—regardless of whether, as discussed above, it is within ONRR’s authority to adopt rules for that purpose.

c. The 2020 Rule Failed To Consider Existing Methods DOI Uses To Incentivize Production

ONRR’s sister bureaus have regulations in place to incentivize production through royalty relief in certain situations. This section briefly describes some of these bureaus’

royalty-relief programs, which ONRR failed to consider when adopting the 2020 Rule. Immediately below we discuss BSEE’s offshore royalty relief programs, and then BLM’s onshore royalty relief programs.

DOI’s statutory authority allows it to reduce or eliminate a lessee’s OCS royalty obligation in order to promote development, increase production, or encourage production of marginal resources. *See* 43 U.S.C. 1337(a)(3). BSEE’s royalty relief regulations, including those found at 30 CFR part 203, may provide a more appropriate incentive than the 2020 Rule’s revenue-impacting amendments, including the deepwater gathering allowance, which is limited to the OCS.

The Secretary implements 43 U.S.C. 1337(a)(3)(A)–(C) by offering royalty relief under two general categories, “automatic” and “discretionary.” “Automatic” refers to deepwater and deep gas royalty relief that is specified in an OCS lease issued by BOEM. *See* 30 CFR 560.220. “Discretionary” refers to royalty relief that a lessee may apply for under certain scenarios and includes end-of-life and special case royalty relief. *See* 30 CFR 203.50 through 203.56 and 203.80, respectively. For more information, *see* <https://www.boem.gov/oil-gas-energy/energy-economics/royalty-relief>.

In order to receive discretionary royalty relief, a lessee must demonstrate and BSEE must verify that a project would be uneconomic without royalty relief and would become economic with royalty relief. *See* 30 CFR 203.2. The lessee must submit an application to BSEE outlining the estimated economics of the project, which BSEE then reviews. *See id.* (stating that for different types of royalty relief, the applicant must propose and demonstrate that their project or further development is uneconomic without relief); *see also* <https://www.boem.gov/oil-gas-energy/energy-economics/deepwater-royalty-relief-economic-model>. BSEE employs this process to balance the promotion of production with other considerations, including protection of royalty revenue. In contrast, some of the 2020 Rule’s revenue-impacting amendments, including the deepwater gathering allowance and amendments related to the index-based valuation option, may be claimed by all lessees producing from deepwater and are in no manner targeted to incentivize operations that otherwise would be uneconomic. Instead, these revenue-impacting amendments are an across-the-board benefit for any lessee that meets the criteria set out in the amendment—regardless of economic need.

Specific to the deepwater gathering allowance, experience gained in numerous audits and other compliance activities has shown that many lessees commissioned deepwater projects without knowledge of the Deepwater Policy. Rather than having made investment decisions based on the Deepwater Policy, these lessees began to calculate allowances under that policy long after learning of the Deepwater Policy and, typically, long after a project began producing. Some companies, prior to the 2016 Valuation Rule’s rescission of the Deepwater Policy, applied the Deepwater Policy retroactively after selling the assets. Moreover, for production between 1999 and 2016, ONRR found that many lessees misapplied the Deepwater Policy (for example, claiming disallowed costs or claiming gathering in situations that did not meet the Deepwater Policy’s criteria). While the Deepwater Policy (between 1999 and 2016) reduced royalty value, ONRR has seen no evidence that the Deepwater Policy impacted a lessee’s decision-making to invest or not in a deepwater project.

BSEE’s royalty relief practices include safeguards for the public, including the application and approval process, volume thresholds, pricing thresholds, time limits, capital expenditure thresholds, and periodic reviews of approved royalty relief. 30 CFR 203.4 (discretionary end-of-life and deepwater relief programs) and 30 CFR 203.47 (deep gas relief program); *see also* <https://www.bsee.gov/sites/bsee.gov/files/special-case-royalty-relief-overview-1.pdf> (describing the special case relief program’s application process). Each application for discretionary royalty relief is reviewed by BSEE, allowing BSEE to grant relief only where needed and appropriate while still protecting public interests. 30 CFR 203.1 and 203.2 (providing that BSEE may grant a “royalty suspension for a minimum production volume plus any additional volume needed to make your project economic”).

In contrast, four of the five revenue-impacting amendments adopted in the 2020 Rule do not include an economic needs test or an application and approval process. There was and is no safeguard to prevent a lessee with a highly lucrative operation from taking advantage of these revenue-impacting amendments.

Because the 2020 Rule did not consider existing BSEE regulations and practices which provide more targeted, structured methods to incentivize new or continuing OCS operations, it appears ONRR’s 2020 rulemaking process was inadequate to support

adoption of its revenue-impacting amendments, including, on the basis of incentivizing production.

See also the “Memorandum of Understanding between BOEM, BSEE, and ONRR for the Collaboration on Processes, Policies and Systems Relating to the Management of [OCS] Energy and Marine Mineral Development,” signed in March of 2014 (“2014 MOU”), which outlines BOEM, BSEE, and ONRR’s respective duties for and involvement in various aspects of OCS production. ONRR’s role, with respect to these programs, is limited to the maintenance of royalty information in ONRR’s royalty management system. See 2014 MOU, Attachment A, Information Sharing and Bureau Responsibilities; Offshore Federal Oil, Gas, Sulphur and Marine Minerals at page A–21 to A–22 (noting BSEE and BOEM duties to track production and assess price forecasting, among other tasks, with ONRR’s responsibility with respect to royalty relief limited to ensuring volume and royalty data remain up-to-date, and ensuring the collection of any royalty payments). 2014 MOU located at <https://www.boem.gov/sites/default/files/documents//MOU%20BOEM-BSEE-ONRR%20Collaboration%202014-04-16.pdf>.

Onshore, BLM may reduce the royalty on a lease “to encourage the greatest ultimate recovery of the resource and in the interest of conservation of natural resources.” See 43 CFR 3103.4–1(a). Prior to reducing a royalty rate, BLM must conduct an analysis to determine that the royalty reduction “is necessary to promote development of the lease or the BLM determines that the lease cannot be successfully operated under [the royalty rate agreed to in] the terms of the lease.” 43 CFR 3133.3(a)(2). The regulations also specify the process by which companies must apply for a royalty reduction and the required contents of an application. See 43 CFR 3103.4–1(b)(1)–(3).

ONRR invites public comment on whether the targeted royalty-relief authorities delegated to and administered by BSEE and BLM serve as more appropriate mechanisms to evaluate a lessee’s economic or production hardship and to appropriately respond thereto than do the 2020 Rule’s revenue-impacting provisions.

2. Deepwater Gathering Allowances (§§ 1206.110(a) and 1206.152(a))

a. The Regulation Text Adopted in the 2020 Rule Was Not in the Proposed 2020 Rule

Following the Proposed 2020 Rule’s publication, ONRR discovered that some of the regulatory text intended for §§ 1206.110(a) and 1206.152(a) was missing. In the 2020 Rule, at 86 FR 4622, ONRR explained that the proposed regulatory text failed to include certain requirements that a lessee must meet to be eligible for a deepwater gathering allowance, as several commenters had noted. ONRR corrected for its prior error and revised the regulatory text in the 2020 Rule. It made the oil and gas sections consistent, and added language in both §§ 1206.110 and 1206.152 to incorporate the two previously missing components from the Deepwater Policy—the adjacency limitation and requirement for a lessee to identify a central accumulation point at or near the subsea wellhead. See also 86 FR 4654, 4656 (amendatory instructions for §§ 1206.110 and 1206.152 in the 2020 Rule). While the preamble included in the Proposed 2020 Rule had explained ONRR’s intention to adopt a deepwater gathering allowance consistent with the former Deepwater Policy, the revisions to regulation text made with publication of the 2020 Rule, which incorporated key aspects of the former Deepwater Policy into §§ 1206.110 and 1206.152, can be seen as substantive changes that should have triggered a reopening of the comment period.

With respect to §§ 1206.110 and 1206.152, the public was not adequately apprised of and afforded an opportunity to read and comment on the proposed amendments to regulation text as those changes first appeared in the final rule. Accordingly, commenters focused on the Proposed 2020 Rule’s regulation text would have been misled as to the availability of and criteria for a deepwater gathering allowance. ONRR believes that its failure to provide an opportunity for meaningful public comment on the regulation text of §§ 1206.110 and 1206.152 may constitute a procedural defect under 5 U.S.C. 553(b) and justify withdrawal of the deepwater gathering allowance provisions.

b. Deepwater Gathering Allowances Lack Statutory and Policy Support

A Federal oil and gas lessee must pay a royalty of not less than 12.5 percent in amount or value of the production removed or sold from the lease. See 43 U.S.C. 1337(a). Notwithstanding this

statutory requirement, the 2020 Rule adopted the deepwater gathering allowance because doing so “may reduce a lessee’s total royalty burden resulting in a lower total cost to operate on the OCS, and thereby potentially encouraging continued production and conservation of a resource.” 86 FR 4622. As its basis for incentivizing offshore production, the 2020 Rule stated that “Recent Executive and Secretarial Orders call on Federal agencies to appropriately promote and unburden domestic energy production, especially OCS resources.” *Id.* (citing E.O. 13783, “Promoting Energy Independence and Economic Growth,” E.O. 13795, “Implementing an America-First Offshore Energy Strategy,” and S.O. 3350, which promotes the America-First Offshore Energy Strategy).

The 2020 Rule’s stated goal of promoting offshore oil and gas production through deepwater gathering allowances appears to be in conflict with the statutory requirement that royalties be paid based on the “amount or value” of the oil and gas produced. Value for royalty purposes is the value of the oil and gas in marketable condition. See *California Co. v. Udall*, 296 F.2d 384, 388 (D.C. Cir. 1961). Gathering costs, which include costs to measure and condition oil and gas for market, have long been considered a cost incurred by the lessee to place gas in marketable condition. Thus, gathering costs are the sole responsibility of the lessee. See 30 CFR 1206.20 and 1206.171; 53 FR 1184 at 1190–1191 (January 15, 1988); DCOR, ONRR–17–0074–OCS (FE), 2019 WL 6127405 (Aug. 26, 2019).

Also, the deepwater gathering allowance appears to lack policy support. E.O. 13783 and E.O. 13795 (prior to withdrawal) provided that the E.O.s “shall be implemented consistent with applicable law.” Applicable law requires that royalties be paid based on the “amount or value” of the production. See 43 U.S.C. 1337(a)(1)(A). Thus, it is not clear that these E.O.s authorized DOI to incentivize offshore oil and gas production through reduction of the lessee’s royalty burden. Further, even if these E.O.s could be construed to provide such policy support, the E.O.s were revoked within days of the publication of the 2020 Rule and prior to the 2020 Rule’s effective date.

c. The 2020 Rule Added Extensive Justification on Which the Public Was Unable To Comment

While the Proposed 2020 Rule provided a lengthy background of the history of the Deepwater Policy, it

provided little justification for its codification, citing only that ONRR was “reevaluating its rules in light of E.O. 13783 and E.O. 13795, which call on Federal agencies to promote and unburden domestic energy production, and the Secretarial Orders encouraging robust and responsible exploration and development of [OCS] resources.” 85 FR 62060. In the 2020 Rule, however, ONRR explained its reasoning in far greater detail. *See* 86 FR 4622–4625. Thus, the Proposed 2020 Rule’s lack of a fully-reasoned explanation for codifying a deepwater gathering allowance may have limited the public’s opportunity to meaningfully comment on ONRR’s intended regulatory change. *See* Section II.A.3. above and further discussion below.

The 2020 Rule listed several new factors that warranted a deepwater gathering allowance in the GOM. First, it explained that the GOM is now a mature hydrocarbon province—most of the large fields have been discovered and developed and the remaining fields are smaller and more likely to be developed with subsea tiebacks, the costs of which would likely be allowed as a transportation allowance under the deepwater gathering allowance. *See* 86 FR 4623. Second, the 2020 Rule noted the drop in commodity prices since the development and publication the 2016 Rule, which seemingly makes deepwater investment less economic. *See* 86 FR 4623–4624. Third, the 2020 Rule compared the decrease in applications for drilling permits in the GOM to an increase in onshore drilling permits. *See* 86 FR 4624. Fourth, it referenced BOEM’s current National Assessment of Undiscovered Oil and Gas Resources of the U.S. OCS, which shows declines in the GOM’s economically recoverable oil and gas resources. *Id.* Finally, it explained the increased risk, cost, and national importance of producing oil and gas from the deepwater OCS. 86 FR 4622–4625. Since this information was not provided in the Proposed 2020 Rule, the public did not have an opportunity to comment on these reasons for adopting a deepwater gathering allowance.

3. Reinstated Extraordinary Processing Allowances for Federal Oil and Gas (§ 1206.159(c)(4))

a. Extraordinary Processing Allowances Lack Statutory and Policy Support

Please see the discussion above at Section II.B.2.b.

b. Final Rule Included Inconsistent Language on Incentivizing Production

ONRR addressed extraordinary processing allowances and hard caps on transportation and processing allowances in the same section of the Proposed 2020 Rule. 85 FR 62058. ONRR asserted in the Proposed 2020 Rule that reinstating a lessee’s ability to request approval to claim an extraordinary processing allowance and removing hard caps on transportation and processing allowances would incentivize production or remove a disincentive to produce. *See* 86 FR 4615. Those assertions conflict with other statements in the 2020 Rule that indicate the incentives, if any exist, are negligible. *See* 86 FR 4616–4617. Moreover, the Proposed 2020 Rule and 2020 Rule did not show any measurable connection between extraordinary processing allowances and increased production despite relying on an assertion that reinstating the allowance would incentivize production. The 2020 Rule adopted the amendment on extraordinary processing allowances but, based on a new economic analysis, did not adopt the hard caps on transportation and processing allowances.

The Proposed 2020 Rule stated that allowing a lessee to request approval for an extraordinary processing allowance and to request to exceed the transportation and allowance hard caps would incentivize production. 85 FR 62058. The 2020 Rule referenced various statutes, E.O.s, and S.O.s to “emphasize the importance of reducing regulatory burdens so that energy producers, and particularly oil, natural gas, and coal producers, are incentivized to produce more energy.” 86 FR 4615. However, in response to public comments, the 2020 Rule also provided that it was “not premised on increasing the production of oil, gas, or coal by some measured amount” and was, instead, “meant to incentivize both the conservation of natural resources (by extending the life of current operations) and domestic energy production over foreign energy production.” 86 FR 4616.

Later, the 2020 Rule presents a conflicting position—that the monetary impact of the rule’s amendments is insufficient to incentivize new production or to incentivize a lessee to continue producing from a Federal lease when the lessee otherwise would not. In response to comments that suggest the allowances provide a disincentive for a lessee to reduce their costs for transportation and processing, ONRR generally referred to the Federal Government’s royalty share of

production, which is typically 12 1/2 or 16 2/3 percent and a lessee’s retention of the remaining 87 1/2 or 83 1/3 percent, respectively. The 2020 Rule concluded that the lessee’s interest provided a significant incentive in minimizing transportation and processing costs. *See* 86 FR 4620–4621. Thus, the 2020 Rule assumed the Federal Government benefits from a lessee’s motivation to be cost-conscious on its greater share. 86 FR 4646. Accordingly, ONRR stated it did not expect the regulatory limits on transportation and processing allowances on the government’s smaller share to affect a lessee’s decision making with respect to transportation and processing expenses proportionately applied to the lessee’s greater share. *See* 86 FR 4626.

The 2020 Rule again contradicted earlier statements in that rule in its discussion on helium-bearing gas streams. *See* 86 FR 4628. Although ONRR acknowledges that helium production from Federal leases is managed by BLM, helium royalties are not affected by the extraordinary processing allowance provision. *See Exxon Corp.*, 118 IBLA 221, 229 n.9 (1991) (noting that MMS does not consider helium in valuing a gas stream for royalty purposes because “it is not considered a leasable mineral.”); *see also* <https://www.blm.gov/programs/energy-and-minerals/helium/division-of-helium-resources> (noting that the BLM’s Division of Helium Resources “adjudicates, collects, and audits monies for helium extracted from Federal lands”). Further, only one of the prior extraordinary processing allowance approvals involved a helium-bearing gas stream. *See* 86 FR 4628. Yet, the 2020 Rule maintained that reinstating extraordinary processing allowances is necessary because “the U.S. has important economic and national security interests in ensuring the continuation of a reliable supply of helium, including that recovered from unique gas streams requiring costly equipment to remove carbon dioxide and hydrogen sulfide before helium can be extracted.” 86 FR 4628.

c. ONRR’s Authority To Incentivize Production

Please see discussion at Section II.B.1., above.

d. The 2020 Rule Included Extensive Justification not Made Available for Public Comment

The reasons stated in the Proposed 2020 Rule for changes to the 2016 Valuation Rule’s amendments to allowance limits (removing the

regulatory hard caps on transportation and processing allowances and reinstituting extraordinary processing allowances) were premised on promoting domestic production by reducing administrative burdens and incentivizing production by increasing transportation and processing allowances and thereby decreasing the royalties due. *See* 85 FR 62058.

While the 2020 Rule did not adopt the proposed amendments to remove regulatory hard caps on transportation and processing allowances, it did reinstitute extraordinary processing allowances. In doing so, the 2020 Rule cited additional reasons from commenters that harken back to those submitted by commenters—and rejected by ONRR—during promulgation of the 2016 Valuation Rule. *See* https://www.onrr.gov/Laws_R_D/FRNotices/AA13.htm. Specifically, the 2020 Rule identified the following reasons in support of reinstituting a lessee's ability to request an extraordinary processing allowance:

(1) The technology to process two Wyoming unique gas streams has not changed, “despite technological advances in processing relevant to many other areas and types of gas streams.” 86 FR 4628.

(2) Extraordinary processing allowances are essential for two major gas processing facilities in Wyoming that treat challenging gas streams, and without an extraordinary processing allowance approval, these two plants are at a competitive disadvantage and may be prematurely retired. 86 FR 4627.

(3) One of Wyoming's unique gas streams, which previously had been approved for an extraordinary processing allowance, contains recoverable quantities of helium, an element that is vital to the Nation's security and economic prosperity. 86 FR 4628.

(4) In instances where a lessee might not otherwise choose to produce a gas stream containing helium, the opportunity to apply for an extraordinary processing allowance approval could incentivize the lessee to either continue producing or to initiate production. 86 FR 4628.

(5) The overall positive economic impact to Wyoming of continuing operation of the Federal leases that historically benefitted from extraordinary processing allowances outweighs any reduction in royalties Wyoming receives. 86 FR 4628.

As discussed above, although the Proposed 2020 Rule's proposed amendment to reinstitute extraordinary processing allowances was premised on incentivizing production, ONRR

concluded that in most cases, providing an extraordinary processing allowance is not sufficient to incentivize production. *See* 86 FR 4627–4629. Apart from an unpersuasive argument about incentivizing production, ONRR relied entirely on reasons submitted by commenters in response to the Proposed 2020 Rule to support reinstating a lessee's ability to request an extraordinary processing allowance. *See* 86 FR 4627–4629. Therefore, the public did not have a meaningful opportunity to comment on most of the reasons that ONRR relied on in the 2020 Rule to reinstitute extraordinary processing allowances in the final rule.

4. Expansion of the Federal Gas Index Pricing Valuation Option to Federal Gas Sold Under Arm's-Length Contracts (§§ 1206.141(c) and 1206.142(d))

Prior to the 2016 Rule, ONRR regulations did not include an index-based valuation option for Federal gas or natural gas liquids. The 2016 Rule included such an option. It allowed Federal oil and gas lessees a choice of methods in calculating royalties due on gas and on natural gas liquids. One option, which a lessee could elect for a two-year period of time (or longer), was to calculate royalty value for gas using a formula based on the high of certain published index prices, reduced by either 5% for onshore production or 10% for offshore production (subject to certain limits), with the reduction designed to account for a conservative estimate of average transportation costs as adjusted by average, non-deductible costs of placing gas in marketable condition. This option was only available for gas a lessee disposed of in non-arm's-length transactions—transactions which are most frequently between affiliates, and therefore may not be at market value, but rather at prices influenced by the affiliate relationship. Since index prices are published prices derived from reported arm's-length transactions, ONRR considered the index-based valuation formula included in the 2016 Rule a simpler, acceptable, and potentially preferable method to value gas disposed of in non-arm's-length (or affiliate) transactions. 81 FR 43338, 43346–43348.

a. New Analysis Shows a Decrease in Royalties Collected

Several commenters on the Proposed 2020 Rule expressed concern that ONRR's assumption that 50 percent of lessees would elect the index-based valuation option was flawed and failed to represent logical business decision making processes. As commenters

suggested, a lessee might apply an internal, business-driven threshold to decide if the index-based valuation method would be of economic benefit or harm. Within a single lessee's portfolio of properties, the lessee might choose to use the index-based valuation method for some properties but not others.

As described in this Economic Analysis below, ONRR has performed a new analysis to identify a more accurate estimate of the potential annual impact to royalty collections associated with the expansion of the index-based valuation method to arm's-length sales of natural gas and NGLs. This new analysis—based on the assumption that a lessee will act in its own financial best interest when deciding whether to use the index-based valuation option for its arm's-length sales—resulted in a projected net decrease in royalty collections of over \$7 million per year as compared to collections made without the use of an index-based valuation option for arm's-length sales (*i.e.*, as would occur under ONRR's regulations prior to the 2020 Rule, which only allow index-based valuation for non-arm's-length dispositions). This estimate sharply contrasts with the estimated \$28.9 million per year increase in royalties stated in the 2020 Rule.

b. Arm's-Length Transaction Data Is a Better Measure of Value

Arm's-length contracts are those negotiated between independent parties with opposing economic interests. *See* 30 CFR 1206.20. ONRR has long concluded that the gross proceeds accruing under an arm's-length contract is, in most cases, the best indicator of fair market value. *See, e.g.*, 53 FR 1186 (Jan. 15, 1988); 81 FR 43338 (July 1, 2016).

The 2020 Rule amended the 2016 Valuation Rule to introduce an index-based valuation option for Federal gas sold in arm's-length sales. The Economic Analysis in the 2020 Rule explained that, due to those amendments, royalty payments were expected to increase. ONRR relied on that analysis to deviate from its long-held position of relying exclusively on gross proceeds valuation (or a proxy where gross proceeds could not be reliably determined) to value arm's-length sales of Federal gas for royalty purposes. ONRR found that it had protected the Federal lessor's interest based on the conclusion that royalties were expected to meet or exceed values based on gross proceeds. But as explained in the Economic Analysis of this rule, the analysis in the 2020 Rule was flawed because it did not consider

that economic factors will influence a lessee's decision to elect to use the index-based valuation method. ONRR has now reviewed historical data and can now show that electing the index-based valuation option would likely result in collecting less royalties for arm's-length sales.

5. Change of Index-Based Value to the Published Average Bidweek Price

The 2020 Rule amended regulations at §§ 1206.141(c)(1)(i) and (ii) and 1206.142(d)(1)(i) and (ii) to change references to the "highest monthly bidweek price" for the index pricing points to which a lessee's gas could flow, to the "highest of the monthly bidweek average prices" for the index pricing points to which a lessee's gas could flow. The use of average index prices was considered during the 2016 valuation rulemaking process and rejected. However, the 2020 Rule sought to reverse ONRR's earlier decision on that point so as to incentivize production. But, as discussed above, ONRR's authority to amend its valuation regulations to incentivize production is questionable; its 2020 Rule did not prove that it would incentivize production; and the same rule was internally inconsistent on whether it would, in fact, incentivize production.

6. Further Reduction to Index in Index-Based Valuation To Account for Transportation

The 2020 Rule amended regulations at §§ 1206.141(c)(1)(iv) and 1206.142(d)(1)(iv) to increase the amount of a reduction to index to account for the average costs of deductible transportation, after adjustment for the non-deductible costs of placing gas into marketable condition. This amendment was justified, in part, on an economic analysis of more recent royalty data, which showed higher average transportation costs than ONRR had relied on in adopting the 2016 Valuation Rule. However, the amendment also was justified on an intent to incentivize production. But, as discussed above, ONRR's authority to amend its valuation regulations to incentivize production is questionable; its 2020 Rule did not prove that it would incentivize production; and the same rule was internally inconsistent on whether it would, in fact, incentivize production.

C. Comments in Response to the First Delay Rule

ONRR received numerous comments in response to the First Delay Rule. Most commenters stated that a complete withdrawal of the 2020 Rule is

warranted. Several commenters presented material and arguments that were distinguishable from earlier comments. The new materials provided by commenters, along with ONRR's most recent findings and updated economic analysis, led ONRR to change its position with respect to several considerations that were thought to support the 2020 Rule. ONRR addresses below many of the public comments that ONRR received in response to specific questions posed in the First Delay Rule.

1. Reliance on E.O.s and Scope of Secretarial Authorities Delegated to ONRR

ONRR relied on E.O.s in effect during the time it promulgated the 2020 Proposed Rule and the 2020 Rule. *See* 86 FR 4612 and 85 FR 62056–62057 (citing E.O. 13783, E.O. 13795, and E.O. 13892).

Public Comment: Multiple commenters opined that the change in policy requires ONRR to reconsider all or certain provisions of the 2020 Rule. Other commenters suggested the opposite, asserting that the prior E.O.s were not the sole justification for the 2020 Rule, and that ONRR provided sufficient detail in the 2020 Proposed and Final Rules to justify the amendments independent of the E.O.s. The commenters stated that the 2020 Rule sought to improve certainty and accuracy in royalty reporting and accounting consistent with FOGMA and other mineral leasing laws. Commenters contended that ONRR relied on appropriate legal mandates to promulgate the 2020 Rule and asserted that policy changes cannot outweigh ONRR's governing legal authority under FOGMA and the mineral leasing laws when it conducts rulemaking. One commenter asserted that changing policy where there is a new Administration or shift in E.O.s would ultimately create regulatory instability with respect to valuation and reporting requirements, thereby directly contradicting 30 U.S.C. 1711(a), which requires ONRR "to establish a comprehensive . . . production accounting and . . . auditing system to provide the capability to accurately determine . . . royalties . . . and other payments owed and to collect and account for such amounts in a timely manner."

ONRR Response: ONRR proposed the 2020 Rule "because policy directives issued after [the 2016 Valuation Rule's publication] give different weight to the factual findings, and also dictate that a different policy-based outcome be pursued." 85 FR 62056. The Proposed

2020 Rule also explained that an agency's reconsideration of regulations in light of a new Administration's policy objectives is acceptable and within the agency's discretion. *Id.* As such, ONRR's discussions for the regulatory changes largely focused on reducing regulatory burden or uncertainty and incentivizing production. *See* 85 FR 62054, 62056–62057. The Proposed 2020 Rule generally sought to further the objectives of E.O. 13783, E.O. 13795, E.O. 13892, S.O. 3350, and S.O. 3360 in two ways, providing mechanisms that promote new and continued domestic energy production and simplify reporting. *See* 85 FR 62057. However, ONRR did not (a) articulate how the 2020 Rule's proposed amendments furthered ONRR's delegated revenue management responsibilities, (b) explain the source of the delegation to ONRR to incentivize production, or (c) describe how the amendments would incentivize production or simplify reporting. In part, ONRR proposes to withdraw the 2020 Rule due to the revocation of these E.O.s and the uncertainty as to whether ONRR's authority and responsibilities permit it to adopt valuation rules for the purpose of incentivizing production and whether the amendments adopted would, in fact, incentivize production. Additional discussion of ONRR's reliance on incentivizing production as a rulemaking consideration is addressed in Section II.B.1.

2. Deepwater Gathering Costs

MMS issued the Deepwater Policy on May 20, 1999, authorizing a lessee to include certain deepwater gathering costs in its transportation allowance. Although the Deepwater Policy conflicted with 30 CFR 1206.110(a) and 1206.152(a), neither MMS nor ONRR adopted regulations resolving this conflict. The 2016 Valuation Rule ended the practice that had existed under the Deepwater Policy since 1999. *See* 30 CFR 1206.110(a) and 1206.152(a) (2019). The 2020 Rule sought to return to the practice permitted by the Deepwater Policy by codifying the policy in ONRR's regulations. *See* 86 FR 4612. The justification for the deepwater gathering amendments was based, in part, on declining oil and gas production in and revenues from the Gulf of Mexico. *See* 86 FR 4623–4624.

Public Comment: Some commenters stated that the deepwater gathering allowance is not consistent with the current law and policy of the United States. Some commenters emphasized that the deepwater gathering allowance evidenced that ONRR was prioritizing increased oil and gas production over

other considerations, including proper management of royalty revenues and protecting the public interest. One commenter emphasized that the deepwater gathering allowance reduces Federal royalties without adequate justification. This commenter also noted that, while DOI must make the OCS available for development, OCSLA does not require ONRR to incentivize production for a lessee's benefit. A commenter asserted that ONRR provided no support for the assertion that a deepwater gathering allowance would incentivize production.

Some commenters supported the deepwater gathering allowance and emphasized that industry relied on the Deepwater Policy between 1999 and 2016 when making financial investments and leasing and development decisions. These commenters suggest that retroactively eliminating such allowances would present legal vulnerabilities (stating that it was unlawful for ONRR to eliminate the deepwater gathering allowance considering that a lessee relied on it to make leasing and development decisions) and may disincentivize future investment and development on the OCS. Commenters described the deepwater production environment as very different from typical onshore or shallow water environments. Another commenter disagreed with the premise of the question posed in the First Delay Rule because, according to the commenter, subsea movement of oil and gas is not gathering. That commenter asserted that ONRR has not construed the subsea movement of oil and gas as gathering for many years. A commenter that supported the 2020 Rule's deepwater gathering allowance explained that the Deepwater Policy was originally created and implemented in 1999 and that the elimination of the Deepwater Policy in 2016 violated contract law and the APA.

ONRR Response: Reliance on the Deepwater Policy as part of long-term decision making is questionable since that guidance was, from the time of its issuance in 1999 up to its rescission in the 2016 Valuation Rule (*see* 81 FR 43340, 43343, and 43352), not in conformity with the express language of MMS' regulations that governed gathering and transportation allowances. *See* 30 CFR 1206.20 (defining gathering and transportation); 30 CFR 1206.110 (governing oil transportation allowance); 30 CFR 1206.152 (governing gas transportation allowance); *see also Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 386 (1947) (holding that reliance on an agency's advice that Federal crop

insurance would cover a loss was unwarranted where such advice conflicted with a Federal regulation, noting that "not even the temptations of a hard case can elude the clear meaning of the regulation").

Additionally, ONRR acknowledges that the 2020 Rule may have contained inconsistent language on incentivizing production and may not have demonstrated how and to what extent the amendments would impact production. In Sections II.A. II.B.1., and II.B.2., this proposed rule discusses these possible deficiencies in the 2020 Rule's justifications and other possible procedural errors specific to deepwater gathering costs.

3. Extraordinary Processing Allowances

Public Comment: Some commenters asserted that ONRR failed to provide a reasoned or detailed justification in the 2020 Rule for its decision to reinstate extraordinary processing allowances. Some commenters said reinstatement of the allowances would not incentivize production, opining that, instead, producers will produce when they are likely to receive enough proceeds to conduct economic operations. Other commenters generally characterized the allowances as a benefit extended to industry at cost borne by the public in the form of environmental harms and loss of royalty revenue.

A few commenters were in favor of reinstating extraordinary processing allowances, emphasizing that the allowances incentivize ongoing investment, as well as mutually beneficial development and production in atypical areas. These commenters noted that, due to the application and approval process, these allowances exist in limited circumstances. Commenters stated that industry relied on the allowances when making investment decisions and argued that the allowance is one of the tools that can be used to extend the life of existing wells and maximize the value of the associated leases.

ONRR Response: ONRR acknowledges that the 2020 Rule contained inconsistent language on incentivizing production. *See* discussion in Section II.B.1., *infra*.

4. Considering the Impacts of Climate Change

Public Comment: Multiple commenters urged ONRR to consider science on the source and impacts of climate change in setting royalty and revenue management policy. One commenter stated that ONRR should incorporate climate damages when setting royalties from fossil fuel

extraction on public lands and waters, and the best way to do that is to include a carbon adder in the royalty rate that reflects the social cost of carbon and social cost of methane.

Other commenters disagreed. One commenter explained that this topic falls outside the scope of the 2020 Rule because ONRR's role within DOI is the collection and disbursement of Federal and Indian royalties owed on leases that have already been issued, which constitute binding contracts. This commenter further stated that the matters relating to the issuance of new leases and potential impacts on climate change arising from leasing activity fall outside of the authority delegated to ONRR and, accordingly, are irrelevant to an evaluation of the 2020 Rule.

Another commenter stated that, for purposes of determining the value for royalty purposes of coal production from Federal leases, consideration of climate change factors is unlawful as it contravenes DOI's statutory mandate under the MLA.

One commenter stated that ONRR appropriately addressed climate change in the 2020 Rule. *See* 86 FR 4612, 4617. This commenter urged that further environmental review of leases in the context of ONRR's royalty valuation rulemaking is inappropriate.

ONRR Response: Addressing climate change is a priority to the Federal Government. *See, e.g.,* E.O. 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" and E.O. 14008, "Tackling the Climate Crisis at Home and Abroad." However, as described in Section I.A., ONRR is to collect, verify, and then disburse the revenues associated with the production of natural resources on Federal and Indian lands and the OCS. 30 U.S.C. 1711; 30 CFR 1201.100. Moreover, the evaluation of environmental impacts is typically addressed by bureaus and agencies performing leasing and permitting functions. 86 FR 4612, 4617.

5. Assumptions Regarding the Index-Based Valuation Option

In the 2020 Rule, ONRR assumed that 50 percent of reported royalties would come from eligible lessees that elected to use the index-based valuation option, while the remaining 50 percent would not (86 FR 4643–4645) and, as a result, the lessees that elected the index-based valuation option were estimated to pay an additional \$28.9 million per year in royalties while saving \$1.35 million in administrative costs. 86 FR 4648–4650. ONRR posited these assumptions even though the result is that a lessee would pay additional royalties far in excess of

the administrative cost savings they would realize. In the First Delay Rule, ONRR requested public comment on whether the assumption was flawed, and whether the resulting conclusion is appropriate and supported by current law and policy. *See* 86 FR 9288.

Public Comment: Multiple commenters disagreed with the assumption that 50 percent of lessees would elect to use the index-based valuation option. One commenter described the assumption as baseless and urged ONRR to refrain from making conclusions based on the assumption. One commenter concluded that a lessee will value gas by the option that minimizes the royalty burden, explaining, for example, if the royalty payment resulting from a first arm's-length sale is less than the royalty payment that would be due using an index-based valuation methodology, then the lessee will elect to use the first arm's-length sale.

A few commenters agreed the estimate was appropriate, noting that industry values early certainty and may elect to use the index-based valuation option even if the price is slightly higher than gross proceeds to avoid audits and other compliance reviews that lead to the issuance of an order directing payment of additional royalties and late payment interest. One commenter suggested that ONRR designed the index-based valuation option solely to collect a greater royalty payment than what a lessee historically paid. The commenter opined that ONRR correctly assumed that some companies would elect to use the index-based valuation method for the certainty alone.

ONRR Response: ONRR recently revised the method of its economic analysis (provided in the Section III) to more accurately value the potential annual impact to royalty collections resulting from the expansion of the index-based valuation method to arm's-length sales of Federal gas and NGLs. The new analysis estimates that this provision of the 2020 Rule would decrease royalty collections by \$7 million per year, rather than the \$28.9 million per year increase previously estimated. Please refer to Sections II.B.4. through II.B.6. for further discussion of the amendments to the index-based valuation method.

6. Transparency in Royalty Administration in Index-Based Valuation

Public Comment: A commenter stated that the index-based option provides clarity and early certainty for the producer but not for the public,

asserting there is insufficient transparency in royalty administration for the public.

ONRR Response: ONRR appreciates the public's interest in bringing greater clarity, certainty, and transparency to royalty valuation in a manner that fits the needs of all stakeholders. The scope of this rulemaking is limited to the methods used to determine value for royalty purposes and does not consider topics related to how ONRR shares royalty information with the public. For additional information on production, collection, and disbursement activities, please visit <https://revenue.data.doi.gov/>

7. Substitution of Index-Based Value for Arm's-Length Sales

Public Comment: A commenter stated that it was premature for ONRR to extend the index-based valuation option to arm's-length gas sales without evaluating the impact of the index-based option on non-arm's-length gas dispositions.

Another commenter reiterated that royalty payments are not expected to be reduced under the index-based option. The commenter added that ONRR retains the ability to access sales information from a lessee that elects an index-based valuation methodology and concluded that ONRR will be able to use the sales information to monitor the royalty implications of the index-based method and, if appropriate, revisit the index-based valuation options.

Another commenter stated that, while they agree that arm's-length negotiated contracts are the best indicator of value, the index-based valuation option may better serve both ONRR and lessees because of the estimated \$28.9 million per year increase in royalty payments while permitting a lessee to avoid the complex reporting required by a gross proceeds valuation method. The commenter added that the two-year election period will prevent a lessee from manipulating reporting based on what method might be more economically beneficial each month. One commenter explained that industry values early certainty and assurance it will not face a burdensome audit years after the initial royalty payment.

ONRR Response: ONRR, and previously MMS, has long viewed the gross proceeds received under an arm's-length contract between independent persons who are not affiliates and who have opposing economic interests to be the best indicator of value in most circumstances. *See* 53 FR 1186 (Jan. 15, 1988); 81 FR 43338 (July 1, 2016). A lessee that sells gas for a price higher than the index-based price will have a financial incentive to use the index-

based price because valuation based on gross proceeds will result in the payment of more royalties. A lessee that sells the gas for a price lower than the index-based price has a financial incentive to use its gross proceeds for valuation. A lessee knows its gross proceeds and lessees have long used this amount to report and pay royalties for arm's-length sales. An index-based option for arm's-length sales may provide minimal value to industry since they have long used their gross proceeds to report and pay royalties. ONRR is proposing to withdraw the 2020 Rule in part because there are significant questions about whether the index-based option adds to early certainty and whether it will adequately ensure a fair return for the public.

In Section III, this proposed rule provides a revised economic analysis that estimates royalties impacts when a lessee bases its decision regarding whether to use index-based valuation on its financial interest. That analysis shows that this provision of the 2020 Rule would decrease royalty collections by over \$7 million per year. Please refer to Sections II.B.4. through II.B.6. and III for further discussion of the amendments to the index-based valuation method and the solicitation of comments on ONRR's revised analysis and assumptions.

8. Procedural Adequacy of the 2020 Rulemaking Process

Public Comment: Several commenters stated the 2020 Rule was procedurally inadequate, asserting that interested parties did not have a fair opportunity to comment. One commenter stated that the 2020 Rule failed to provide a "reasoned explanation" for rescinding key portions of ONRR's 2016 rulemaking. The commenter explained that when an agency rescinds a prior policy, it must provide "a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." Another commenter stated that ONRR failed to respond to several public comments or responded in an incomplete or inaccurate manner. This commenter explained that the proposed rule failed to provide the general public, outside of the oil and gas industry, with sufficient information regarding the impacts of the proposals to enable the public to effectively participate in the rulemaking process. Another commenter noted that during the 2020 rulemaking, ONRR did not have public meetings and evidently accepted only the suggestions it received from industry.

Other commenters disagreed. One commenter stated that the 2020 Rule is sound law based on policy deliberations that span almost a decade of thorough public process properly conducted under the APA. Another commenter concluded that the 2020 Rule appropriately complied with the APA. This commenter explained that a proposed rule was issued that described in detail each change that the agency was considering, interested persons were given an opportunity to comment, and the final rule responds to those comments.

ONRR Response: ONRR agrees that procedural flaws exist in the 2020 Rule. Those flaws are explained in Sections II.A. and II.B. Further, ONRR notes that

the 2020 Rule was not part of a rulemaking process that spanned a decade, as implied by the commenter.

III. Economic Analysis

ONRR's delay rules have afforded ONRR more time to reexamine the methods and analyses it used to estimate economic impacts of the 2020 Rule. ONRR recognizes that estimated changes to royalty obligations and regulatory costs in the 2020 Rule impact many groups, including the Federal Government, State and local governments, and industry. These potential changes to royalty obligations can have broader impacts beyond the amount of royalties. Royalty collections are used by these governments in a variety of ways that include funding

projects, developing infrastructure, and fueling economic growth.

Further, changes to royalties are transfers that are distinguishable from regulatory costs or cost savings. The estimated changes in royalties would affect both the private cost to the lessee and the amount of revenue collected by the Federal Government and disbursed to State and local governments. Based on an updated analysis, the net impact of the withdrawal of the 2020 Rule is an estimated \$64.6 million annual increase in royalty collections.

Please note that, unless otherwise indicated, numbers in the tables in this section are rounded to the nearest thousand, and that the totals may not match due to rounding.

ESTIMATED CHANGES TO ROYALTY COLLECTIONS RESULTING FROM WITHDRAWAL OF THE 2020 RULE (ANNUAL)

Rule provision	Net change in royalties paid by lessees
Index-Based Valuation Method Extended to Arm's-Length Gas Sales	\$6,800,000
Index-Based Valuation Method Extended to Arm's-Length NGL Sales	660,000
High to Midpoint Index Price for Non-Arm's-Length Gas Sales	5,062,000
Transportation Deduction Non-Arm's-Length Index-Based Valuation Method	8,033,000
Extraordinary Processing Allowances	11,131,000
Allowances for Certain OCS Gathering Costs	32,900,000
Total	64,600,000

ONRR also estimated that the oil and gas industry would face increased annual administrative costs of \$2.8

million under the 2020 Rule. As discussed below, this is the net impact of various cost increasing and cost

saving measures. Withdrawal of the 2020 Rule will result in an estimated net cost savings for industry.

SUMMARY OF ANNUAL ADMINISTRATIVE IMPACTS TO INDUSTRY FROM WITHDRAWAL OF THE 2020 RULE

Rule provision	Cost (cost savings)
Administrative Cost for Index-Based Valuation Method for Gas & NGLs	\$1,077,000
Administrative Cost Savings for Allowances for Certain OCS Gathering	(3,931,000)
Total	(2,850,000)

Following the publication of the delay rules and after consideration of comments received in response to the First Delay Rule, ONRR assessed which parts of the previous economic analysis warrant revision. To provide a more complete analysis, this rule presents the estimated royalty impacts of the withdrawal of the 2020 Rule using updated analyses. Changes are measured relative to a baseline that includes the royalty changes finalized in the 2020 Rule.

As shown in the tables, an updated analysis of the impact to royalty under the 2020 Rule results in a total decrease in royalties of \$64.6 million per year, which translates to an increase of \$64.6

million per year under this proposed withdrawal. This amount stands in contrast to the annual decrease of \$28.9 million per year in royalties previously estimated in the 2020 Rule. The change in amounts is largely attributable to the new assumption and method used to estimate the impact from extending the index-based valuation method to arm's-length natural gas and NGL sales. A more detailed explanation of the new method is described below. All amounts other than those related to the index-based valuation option remain unchanged from those published in the 2020 Rule.

The administrative costs and potential administrative cost savings attributable

to the 2020 Rule should also be updated using the new assumptions for the extension of index-based valuation method to arm's-length sales. The administrative cost to industry for deepwater gathering allowances would remain unchanged from the value published in the 2020 Rule.

ONRR also recalculated the estimated one-time administrative cost associated with the optional use of the index-based valuation method. These costs are only calculated by a lessee once to distinguish allowed and disallowed costs in reported processing and transportation allowances. Unless there is a significant change in processing and transportation costs, the ratio of allowed

to disallowed costs should not substantially change from year to year.

ONE-TIME ADMINISTRATIVE IMPACTS TO INDUSTRY FROM WITHDRAWAL OF 2020 RULE

Rule provision	Cost
Administrative Cost of Unbundling Related to Index-Based Valuation Method for Gas & NGLs	\$4,520,000

If the 2020 Rule is withdrawn, there will be an increase in administrative costs when compared to the current status quo.

ONRR used the same base dataset for this proposed rule's economic analysis as it used in the 2020 Rule for consistency and comparability. The description of the data was provided in the Economic Analysis of the 2020 Rule and is repeated here. ONRR reviewed royalty data for Federal oil, condensate, residue gas, unprocessed gas, fuel gas, gas lost (flared or vented), carbon dioxide, sulfur, coalbed methane, and natural gas products (product codes 03, 04, 15, 16, 17, 19, 39, 07, 01, 02, 61, 62, 63, 64, and 65) from five calendar years, 2014–2018. ONRR used five calendar years of royalty data to reduce volatility caused by fluctuations in commodity pricing and volume swings. ONRR adjusted the historical data in this analysis to calendar year 2018 dollars using the Consumer Price Index (all items in U.S. city average, all urban consumers) published by the BLS. ONRR found that some companies aggregate their natural gas volumes from multiple leases into pools and sell that gas under multiple contracts. A lessee reports those sales and dispositions using the "POOL" sales type code. Only a small portion of these gas sales are non-arm's-length. ONRR used estimates of 10 percent of the POOL volumes in the economic analysis of non-arm's-length sales and 90 percent of the POOL volumes in the economic analysis of arm's-length sales.

Change in Royalty 1: Using Index-Based Valuation Method To Value Arm's-Length Federal Unprocessed Gas, Residue Gas, Fuel Gas, and Coalbed Methane

ONRR analyzed this provision similarly to the 2020 Rule, assuming that half of lessees would elect to use the index-based valuation method. ONRR received many comments stating that this assumption was flawed, because a lessee will typically act in a manner that maximizes, not harms, financial benefits to the lessee. ONRR stated in the 2020 Rule that the assumption that half of lessees would elect to use the index-based valuation option was an attempt to simplify the

royalty impact estimation. Due to the delay rules, ONRR was able to apply a more sophisticated set of assumptions to accurately identify the lessees that would likely benefit from the 2020 Rule's amendments to the index-based valuation option and those that would not. ONRR began the analysis with a similar rationale on the same data that it used in the 2020 Rule's calculation. ONRR reviewed the reported royalty data for all Federal gas sales except for non-arm's-length transactions (discussed below), future valuation agreements, and percentage of proceeds ("POP") contracts. ONRR also adjusted the POOL sales down to 90 percent (as described above), which were spread across 10 major geographic areas with active index prices. The 10 areas account for over 95 percent of all Federal gas produced. ONRR assumed the remaining five percent of lessees producing Federal gas will not elect the index-based method because areas outside of major producing basins may have infrastructure limitations or limited access to index pricing. The 10 geographic areas are:

1. Offshore Gulf of Mexico
2. Big Horn Basin
3. Green River Basin
4. Permian Basin
5. Piceance Basin
6. Powder River Basin
7. San Juan Basin
8. Uinta Basin
9. Williston Basin
10. Wind River Basin

To calculate the estimated royalty impact, ONRR:

(1) Identified the monthly bidweek price index, published by *Platts Inside FERC*, for each applicable area—Northwest Pipeline Rockies for Green River, Piceance and Uinta basins; El Paso San Juan for San Juan basin; Colorado Interstate Gas for Big Horn, Powder River, Williston, and Wind River basins; El Paso Permian for Permian basin; and Henry Hub for the GOM. ONRR determined the applicability of a price index based on proximity to the producing area and the frequency with which ONRR's audit and compliance staff verify these index prices in sales contracts;

(2) subtracted the appropriate transportation deduction as described in

the 2020 Rule from the midpoint index price identified in step (1);

(3) compared the reported monthly price for each property inclusive of any reported transportation allowances to the applicable index price for the property calculated in step (2) for all months in the first year of reported royalty data in the dataset;

(4) identified all properties in step (3) where the reported price exceeded the price calculated in step (2) for seven or more months in the time period;

(5) used the property list created in step (4) as the base universe of properties that would elect to use the index-based valuation method available;

(6) compared the actual reported price for each month for each property in the universe identified in step (5), inclusive of transportation allowances reported, to the calculated price in step (2) to identify the difference between what was reported as actual royalties and what would have been reported as royalties under the terms of the index-based valuation method;

(7) performed this calculation and comparison for the next two sets of two-year time periods in the remaining four years of royalty reporting in the dataset; and

(8) Calculated the total difference in the four years between the original reported royalty prices and royalties of the identified property universe that elected the index-based valuation method, then divided that total by four to get an annual estimated royalty impact.

This new method of identification of the property universe that would elect the index-based valuation method if given the opportunity is the basis for the differences between the estimated royalty impact published in the 2020 Rule and the estimated royalty impact included in this proposed rule. Also, this identification of the properties that stand to benefit is similar to how a lessee will make its decisions and is a better method to estimate the royalty impact.

ONRR estimates the index-based valuation method in the 2020 Rule will decrease royalty payments on arm's-length natural gas by approximately \$6.8 million per year when compared to ONRR regulations in effect prior to the

2020 Rule. ONRR requests comments on the assumptions in the method described above.

ANNUAL CHANGE IN ROYALTIES PAID USING INDEX-BASED METHOD FOR ARM'S-LENGTH GAS SALES IF 2020 RULE IS WITHDRAWN

	Gulf of Mexico	Onshore basins	Total
Annualized Reported Royalties from Identified Lease Universe	\$51,720,000	\$168,850,000	\$220,570,000
Royalties Estimated using Index-Based Valuation Method for Lease Universe	53,940,000	159,790,000	213,730,000
Difference	(2,220,000)	9,060,000	6,840,000

Change in Royalties 2: Using the Index-Based Valuation Method To Value Arm's-Length Sales of Federal NGLs

ONRR used similar changes to the assumptions when calculating the royalty impact from extending the index-based valuation option to arm's-length sales of NGLs. As in the previous section, ONRR's goal was to identify a universe of properties that would benefit financially from electing the index-based valuation method. In the 2020 Rule, ONRR assumed that half of the lessees would elect the method without regard to financial benefit or harm.

ONRR used the same dataset for this analysis that was used in the 2020 Rule.

It included all NGL sales except for non-arm's-length transactions and future valuation agreements. ONRR also adjusted the POOL sales down to 90 percent (as described above). These sales were spread across the same 10 major geographic areas with active index prices for this analysis. To calculate the estimated royalty impact of the index-based valuation method on NGLs from Federal properties, ONRR:

(1) Identified the *Platts Oilgram Price Report Price Average Supplement (Platts Conway)* or *OPIS LP Gas Spot Prices Monthly (OPIS Mont Belvieu)* for published monthly midpoint NGL prices per component applicable to each area: Platts Conway for Williston and

Wind River basins; and OPIS Mont Belvieu non-TET for the Gulf of Mexico, Big Horn, Green River, Permian, Piceance, Powder River, San Juan, and Uinta basins. In ONRR's audit experience, OPIS' prices are used to value NGLs in contracts more frequently at Mont Belvieu, and Platts' prices are used more frequently at Conway;

(2) calculated an NGL basket prices (weighted average prices to group the individual NGL components), which compared to the imputed price from the monthly royalty report. The baskets illustrate the difference in the gas composition between Conway, Kansas and Mont Belvieu, Texas. The NGL basket hydrocarbon allocations are:

Platts Conway Basket		OPIS Mont Belvieu Basket	
Ethane-propane (EP mix)	40%	Ethane	42%
Propane	28	Non-TET Propane	28
Isobutane	10	Non-TET Isobutane	6
Normal Butane	7	Normal Butane	11
Natural Gasoline	15	Natural Gasoline	13

(3) subtracted the current processing deductions, as well as fractionation costs and transportation costs

referenced in ONRR regulations without amendment by the 2020 Rule and published online at [https://](https://www.onrr.gov)

www.onrr.gov, as shown in the table below from the NGL basket price calculated in step (2):

NGL Deduction (\$/gal)			
	Gulf of Mexico	New Mexico	Other areas
Processing	\$0.10	\$0.15	\$0.15
Transportation and Fractionation	0.05	0.07	0.12
Total (\$/gal)	0.15	0.22	0.27

(4) compared the reported monthly price for each property inclusive of any reported transportation or processing allowances to the applicable index price for the property calculated in step (3) for all months in the first year of reported royalty data in the dataset;

(5) identified all properties in step (4) where the reported price exceeded the

price calculated in step (3) for seven or more months in the time period;

(6) used the property list created in step (5) as the base universe of properties that would elect to use the index-based valuation method if available;

(7) compared the actual reported price for each month for each property in the universe identified in step (6), inclusive

of transportation and processing allowances reported, to the calculated price in step (3) to identify the difference between what was reported as actual royalties and what would have been reported as royalties under the terms of the index-based valuation method;

(8) performed this calculation and comparison for the next two sets of two-

year time periods in the remaining four years of royalty reporting in the dataset; and

(9) calculated the total difference in the four years between the original reported royalty prices and the royalties if the identified property universe elected the index-based valuation method, then divided that total by four

to get an annual estimated royalty impact.

This new method of identification of the property universe that would elect the index-based valuation method is the basis for the difference between the estimated royalty impact published in the 2020 Rule and the estimated royalty impact included in this proposed rule.

ONRR estimates the index-based valuation method in the 2020 Rule will decrease royalty payments on arm's-length NGLs by approximately \$660,000 per year, and that withdrawing the rule will increase royalty payments by \$660,000 annually. ONRR requests comments on the assumptions in the method described above.

ANNUAL CHANGE IN ROYALTIES PAID USING INDEX-BASED VALUATION METHOD FOR ARM'S-LENGTH NGL SALES IF 2020 RULE IS WITHDRAWN

	Gulf of Mexico	New Mexico	Other Areas	Total
Annualized Reported Royalties from Identified Lease Universe	\$4,990,000	\$350,000	\$9,100,000	\$14,440,000
Royalties Estimated Using Index-Based Valuation Method for Lease Universe	3,470,000	290,000	10,020,000	13,780,000
Annual Net Change in Royalties Paid Using Index-Based Valuation Method for NGLs	1,520,000	60,000	(920,000)	660,000

Change in Royalties 3: Using the Average Index Price Versus the Highest Published Index Price To Value Non-Arm's-Length Federal Unprocessed Gas, Residue Gas, Coalbed Methane, and NGLs

In the 2020 Rule, ONRR amended the index-based valuation method to use the average published bidweek price, rather than the highest published bidweek price, for the appropriate index-pricing point. ONRR accounted for the impacts to royalty collections attributable to arm's-length natural gas transactions in the earlier section. This section will focus on the impact to royalty collections only attributable to non-arm's-length natural gas transactions.

The method for calculation in this proposed rule is similar to the method used in the 2020 Rule with adjustments made related to the universe of properties that would elect the index-based valuation method. ONRR compared the monthly prices reported to it in the first year of the data period, inclusive of transportation allowances, to the index prices for the appropriate producing areas, inclusive of transportation deductions. ONRR then identified the properties with reported

prices higher than the index price in seven or more months of the year. For non-arm's-length natural gas sales, this equates to 56.4 percent of the entire list of properties, and represents a percentage that is higher than the 50 percent assumption made by ONRR in the 2020 Rule's estimated impacts on royalty collections of this same provision. This new percentage incorporates a more logical identification of the properties taking into account a lessee's potential financial benefit.

ONRR used reported royalty data using non-arm's-length ("NARM") sales and 10 percent of the POOL sales type codes based on the assumption above in the same 10 major geographic areas with active index-pricing points, also listed above.

To calculate the estimated impact, ONRR:

(1) Identified the *Platts Inside FERC* published monthly midpoint and high prices for the index applicable to each area—Northwest Pipeline Rockies for Green River, Piceance and Uinta basins; El Paso San Juan for San Juan basin; Colorado Interstate Gas for Big Horn, Powder River, Williston, and Wind

River basins; El Paso Permian for Permian basin; and Henry Hub for the Gulf of Mexico;

(2) multiplied the royalty volume by the published index prices identified for each region;

(3) totaled the estimated royalties using the published index prices calculated in step (2);

(4) calculated the annual average index-based royalties for both the high and volume-weighted-average prices calculated in step (3) by dividing by five (number of years in this analysis); and

(5) subtracted the difference between the totals calculated in step (4).

Because ONRR identified that 56.4 percent of properties fall in the universe of properties that would elect the index-based valuation method, ONRR reduced the total estimate by 43.6 percent in the following table. ONRR estimated that the result of this change is that the 2020 Rule, if it went into effect, would result in a decrease in annual royalty payments of approximately \$5 million, and a withdrawal of that rule would result in an increase in annual royalty payments by a like amount, as reflected in the table below.

ESTIMATED IMPACT TO ROYALTY COLLECTIONS DUE TO WITHDRAWAL OF 2020 RULE'S HIGH TO MIDPOINT MODIFICATION FOR NON-ARM'S-LENGTH SALES OF NATURAL GAS USING INDEX-BASED VALUATION METHOD

	Gulf of Mexico	Onshore basins	Total
Royalties Estimated Using High Index Price	\$107,736,000	\$198,170,000	\$305,907,000
Royalties Estimated Using Published Average Bidweek Price	107,448,000	189,483,000	296,931,000
Annual Change in Royalties Paid due to High to Midpoint Change	288,000	8,687,000	8,975,000
56.4% of applicable properties			5,062,000

Change in Royalties 4: Modifying the Index-Based Valuation Method To Account for Transportation in Valuing Non-Arm's-Length Federal Unprocessed Gas, Residue Gas, and Coalbed Methane

The 2020 Rule increased the reductions to index price to account for transportation of production valued under the non-arm's-length index-based valuation method. ONRR used the new method described previously in this

Economic Analysis to identify the likely lease universe of non-arm's-length natural gas sales. ONRR identified the same 56.4 percent of non-arm's-length natural gas properties as the universe that would elect the method.

To estimate the royalty impact of the change in amount intended to account for transportation, ONRR used reported royalty data using NARM and 10 percent of the POOL sales type codes from the same 10 major geographic areas

with active index-pricing points listed above.

To calculate the estimated impact, ONRR:

(1) Identified appropriate areas using *Platts Inside FERC* index prices (see list above);

(2) calculated the transportation-related adjustment as published in the current regulations and the adjustment outlined in the table below for each area identified in step (1);

TRANSPORTATION DEDUCTION OF INDEX-BASED VALUATION METHOD FOR NON-ARM'S-LENGTH GAS
[\$/MMBtu]

Element	2016 Valuation Rule	2020 Rule
Gulf of Mexico %	5%	10%
Gulf of Mexico Low Limit	\$0.10	\$0.10
Gulf of Mexico High Limit	\$0.30	\$0.40
Other Areas %	10%	15%
Other Areas Low Limit	\$0.10	\$0.10
Other Areas High Limit	\$0.30	\$0.50

(3) multiplied the royalty volume by the applicable transportation deduction identified for each area calculated in step (2);

(4) totaled the estimated royalty impact based off both transportation deductions calculated in step (3);

(5) calculated the annual average royalty impact for both methods

calculated in step (4) by dividing by five (number of years in this analysis); and (6) subtracted the difference between the totals calculated in step (5).

Because ONRR identified the universe of 56.4 percent of lessees that will likely elect this method, ONRR reduced the total estimated impact to royalty collections by 43.6 percent. ONRR

estimated the change will result in a decrease in royalty collections of approximately \$8 million per year if the 2020 Rule goes into effect, and an increase in royalty collections of like amount if the 2020 Rule is withdrawn, as reflected in the table below.

ANNUAL ROYALTY IMPACT DUE TO TRANSPORTATION DEDUCTION MODIFICATION FOR NON-ARM'S-LENGTH SALES OF NATURAL GAS IF 2020 RULE IS WITHDRAWN

	Gulf of Mexico	Other areas	Total
Current Regulations Transport Deduction	(\$5,387,000)	(\$16,375,000)	(\$21,762,000)
Estimate using 2020 Rule Transport Deduction	(10,346,000)	(25,659,000)	(36,005,000)
Change	4,959,000	9,284,000	14,243,000
56.4% universe of properties			8,033,000

Change in Royalties 5: Extraordinary Gas Processing Cost Allowances for Federal Gas

The 2020 Rule allows a lessee to request an extraordinary processing cost allowance. ONRR adopted the same calculation method for these royalty impacts as it did in the 2020 Rule. Using the approvals ONRR granted prior to the 2016 Valuation Rule, ONRR identified the 127 leases claiming an extraordinary processing allowance for residue gas, sulfur, and carbon dioxide (CO₂) for calendar years 2014–2018. The total processing costs are reported across all three products for these unique situations. For these leases, ONRR

retrieved all form ONRR–2014 royalty lines with a processing allowance reported by lessees. For CO₂ and sulfur produced from these leases, ONRR then calculated the annual average processing allowances which exceeded the 66⅔ percent limit and found that only two years exceeded the 66⅔ percent limit. Under these unique approved exceptions, the processing allowances are also reported against residue gas. To account for this, ONRR added the average annual processing allowances taken from those same leases for residue gas. Based on these calculations, ONRR estimates the royalty impact of withdrawing this

provision of the 2020 rule would be an increase in royalties of \$11.1 million per year.

ONRR recognizes that there could be an increase in the number of requests submitted to ONRR related to extraordinary cost processing allowances under this provision. There is little data available to identify the magnitude of these requests, and there is not enough information to determine how many of these potential requests would be approved or denied by ONRR. ONRR invites public comment on this issue and solicits any data that would allow the agency to better quantify these impacts.

ESTIMATED ANNUAL CHANGE IN ROYALTY COLLECTIONS IF 2020 RULE IS WITHDRAWN

Annual Average Sulfur Allowances in Excess of 66⅔%	\$348,000
Annual Average Residue Gas Allowance	10,783,000
Estimated Annual Impact on Royalties	11,131,000

Change in Royalties 6: Transportation Allowances for Certain OCS Gathering for Federal Oil and Gas

In the 2020 Rule, ONRR proposed regulatory changes that would allow an OCS lessee to take certain gathering costs as transportation. ONRR adjusted its method for calculating this royalty impact in response to comments received on the Proposed 2020 Rule and published a corrected method in the 2020 Rule. ONRR will continue to use the adjusted method here to estimate the royalty impact if the 2020 Rule goes into effect.

As previously discussed, the Deepwater Policy was in effect from 1999 until January 1, 2017. Under the Deepwater Policy, ONRR allowed a lessee to treat certain costs for subsea gathering as transportation expenses and to deduct those costs in calculating its royalty obligations. The 2016 Valuation Rule rescinded the Deepwater Policy, but the 2020 Rule would codify a deepwater gathering allowance similar to the Deepwater Policy. To analyze the impact to industry of 2020 Rule's deepwater gathering allowance, ONRR used data from BSEE's Technical Information Management System database to identify 113 subsea pipeline segments, and 169 potentially eligible leases, which might have qualified for an allowance thereunder. ONRR assumed that all segments were similar (in other words, no adjustments were made to account for the size, length, or type of pipeline) and considered only the pipeline segments that were active and supporting producing leases. To determine the range (shown in the tables at the end of this section as low, mid, and high estimates) of changes to

royalties, ONRR estimated a 15 percent error rate in the identification of the 113 eligible pipeline segments. This resulted in a range of 96 to 130 eligible pipeline segments. ONRR's audit data is available for 13 subsea gathering segments serving 15 leases covering time periods from 1999 through 2010. ONRR used the data to determine an average initial capital investment in the pipeline segments. Then, ONRR used the initial capital investment total to calculate depreciation and a return on undepreciated capital investment (also known as the return on investment or "ROI") for eligible pipeline segments and calculated depreciation using a 20-year straight-line depreciation schedule.

ONRR calculated the return on investment using the average BBB Bond rate for January 2018 (the BBB Bond rating is a credit rating used by the Standard & Poor's credit agency to signify a certain risk level of long-term bonds and other investments). ONRR based the calculations for depreciation and ROI on the first year a pipeline was in service. From the same audit information, ONRR calculated an average annual operating and maintenance ("O&M") cost. ONRR increased the O&M cost by 12 percent to account for overhead expenses. ONRR then decreased the total annual O&M cost per pipeline segment by nine percent because, on average, nine percent of wellhead production volume is water, which must be excluded from any calculation of a permissible deduction. ONRR chose these two percentages based on knowledge and information gathered during audits of leases located in the GOM. Finally, ONRR used an average royalty rate of 14 percent, which is the volume-weighted-

average royalty rate for the non-Section 6 leases in the GOM (*See* 43 U.S.C. 1335(a)(9)). Based on these calculations, the average annual allowance per pipeline segment during the period that ONRR collected data from was approximately \$233,000. ONRR used this value to calculate a per-lease cost based on the number of eligible leases during the same period. ONRR then applied this value to the current number of eligible leases. This represented the estimated amount per lease for gathering that ONRR would allow a lessee to take as a transportation allowance based on the 2020 Rule's deepwater gathering allowance. To calculate a range for the total cost, ONRR multiplied the average annual allowance by the low (96), mid (113), and high (130) number of potentially eligible segments. The low, mid, and high annual allowance estimates are \$35 million, \$41.1 million, and \$47.3 million, respectively.

Of the eligible leases, 68 of 169, or about 40 percent, are estimated to qualify for a deduction under the 2020 Rule's deepwater gathering allowance. But due to varying lease terms, multiple royalty relief programs, price thresholds, volume thresholds, and other factors, ONRR estimated that half of the 68, or 34, leases eligible for royalty relief (20 percent of 169) have received royalty relief, which limits the value of a deepwater gathering allowance. ONRR chose to use an estimate of half of the leases for consistency, and it decreased the low, mid, and high annual cost-to-industry estimates by 20 percent. The table below shows the estimated royalty impact of withdrawing this provision of the 2020 Rule.

ANNUAL ESTIMATED IMPACT TO ROYALTY COLLECTIONS IF 2020 RULE IS WITHDRAWN

	Low	Mid	High
Royalty Impact	\$28,000,000	\$32,900,000	\$37,900,000

Cost Savings 1: Transportation Allowances for Certain OCS Gathering Costs for Offshore Federal Oil and Gas

The 2020 Rule, by authorizing transportation allowances for certain OCS gathering, would result in an administrative cost to industry because it requires qualified lessees to monitor

their costs and perform additional calculations. ONRR identified no need to adjust or change the analysis performed in the 2020 Rule to estimate this cost to industry. The cost to perform these calculations is significant because industry often hires additional labor or outside consultants to calculate

subsea pipeline movement costs. ONRR estimates that each lessee with leases eligible for transportation allowances for deepwater gathering systems will allocate one full-time employee annually (or incur the equivalent cost for an outside consultant) to perform the calculation. ONRR used data from the

BLS to estimate the hourly cost for industry accountants in a metropolitan area [\$42.33 mean hourly wage] with a multiplier of 1.4 for industry benefits to

equal approximately \$59.26 per hour. Using this fully burdened labor cost per hour, ONRR estimated that the annual administrative cost savings to industry

if the 2020 Rule is withdrawn would be approximately \$3.9 million.

ANNUAL ADMINISTRATIVE COST SAVINGS TO INDUSTRY TO CALCULATE CERTAIN OCS GATHERING COSTS IF 2020 RULE IS WITHDRAWN

	Annual burden hours per company	Industry labor cost/hour	Companies reporting eligible leases	Estimated cost savings to industry
Allowance for Certain OCS Gathering Costs	2,080	\$59.26	32	\$3,931,000

Cost 1: Administrative Cost From Using Index-Based Valuation Method To Value Arm's-Length Federal Unprocessed Gas, Residue Gas, Fuel Gas, Coalbed Methane, and NGLs

In the 2020 Rule, ONRR assumed that half of the lessees would elect to use the index-based valuation method to value their arm's-length natural gas and NGL transactions. As described earlier in this Economic Analysis, ONRR identified that 39.8 percent of properties with

arm's-length sales would elect this option. This is more accurate than the 2020 Rule assumption, and ONRR will use it to estimate the potential administrative cost savings for industry.

ONRR estimated the index-based valuation method will shorten the time burden per line reported by 50 percent (to 1.5 minutes per electronic line submission and 3.5 minutes per manual line submission). As with Cost Savings 1, ONRR used tables from the BLS to estimate the fully burdened hourly cost

for an industry accountant in a metropolitan area working in oil and gas extraction. The industry labor cost factor for accountants would be approximately \$59.26 per hour = [\$42.33 (mean hourly wage) × 1.4 (including employee benefits)]. Using a labor cost factor of \$59.26 per hour, ONRR estimates the annual administrative cost to industry will be approximately \$1.1 million if the 2020 Rule is withdrawn.

ANNUAL ADMINISTRATIVE COSTS TO INDUSTRY IF 2020 RULE IS WITHDRAWN

	Time burden per line reported	Estimated lines reported using index option (50%)	Annual burden hours
Electronic Reporting (99%)	1.5 min	710,525	17,763
Manual Reporting (1%)	3.5 min	7,177	419
Industry Labor Cost/hour			\$59.26
Total Costs			\$1,077,000

Cost 2: Administrative Cost of Using Index-Based Valuation Method To Value Residue Gas and NGLs Because of Simplified Processing and Transportation Cost Calculations

In the 2020 Rule, ONRR calculated the potential one-time administrative cost savings for industry if lessees elect to use the index-based valuation method. ONRR believes this calculation and method are still adequate and will use the same information again in this rule. Use of the index-based valuation method eliminates the need to segregate deductible costs of transportation and processing from non-deductible costs of placing production in marketable condition. This segregation or allocation of costs, is often referred to as "unbundling." Industry would unbundle transportation systems and processing plants one time in the absence of the 2020 Rule, and then use those unbundled cost allocations for

subsequent royalty calculations. While industry is responsible for calculating these costs, ONRR has published and calculated several unbundling cost allocations. It takes approximately 100 hours of labor per gas plant. ONRR calculated the average number of gas plants reported per payor to be 3.4, across a total of 448 payors reporting residue gas and NGLs, between 2014–2018. Using the BLS labor cost per hour of \$59.26 (described above) and adjusting the assumption to half of lessees choosing the index-based valuation method, ONRR believes the 2020 Rule would have resulted in a one-time cost savings to industry of \$4.5 million dollars. If the 2020 Rule is withdrawn, lessees will incur this one-time administrative cost.

State and Local Governments

ONRR estimated that, as a result of the 2020 Rule, States and certain local governments would receive an overall

decrease in royalty disbursements based on the category that properties fall under, including OCSLA section 8(g) leases (See 43 U.S.C. 1337(g)), GOMESA (See 43 U.S.C. 1331 *et seq.*), and onshore Federal lands. ONRR disburses royalties based on where the royalty-bearing oil and gas was produced.

Except for production from Federal leases in Alaska (where Alaska receives 90 percent of the distribution), Section 8(g) leases in the OCS, and qualified leases under GOMESA in the OCS (more information on distribution percentages at <https://revenuedata.doi.gov/how-it-works/gomesa/>), the following distribution table generally applies:

ONRR DISBURSEMENTS BY AREA

	Onshore	Offshore
Federal	51%	95.2%
State	49%	4.8%

Please visit <https://revenue.doi.gov/explore/#federal-disbursements> to find more information on ONRR's disbursements to any specific State or local government. More specific details about estimated royalty disbursement impacts can be found below.

Indian Lessors

The provisions in the 2020 Rule and this proposed withdrawal are not expected to affect Indian lessors.

Federal Government

The impact of the 2020 Rule to the Federal Government will be a decrease in royalty collections. ONRR estimates the impact to the Federal Government (detailed in the next table of this section) would be a reduction in royalties of \$49.7 million per year. If the 2020 Rule is withdrawn, this estimated impact to royalty collections relative to the 2020 Rule would be an increase in royalties of \$49.7 million per year.

Summary of Royalty Impacts and Costs to Industry, State and Local Governments, Indian Lessors, and the Federal Government

The table below shows the updated net change in royalties expected under withdrawal of the 2020 Rule. The table breaks out the impacts to Federal and State disbursements based on the typical distributions noted in the table above and the appropriate product weightings and the location of the affected properties.

WITHDRAWAL OF THE 2020 RULE: ANNUAL IMPACT TO ROYALTY COLLECTIONS, THE FEDERAL GOVERNMENT, AND STATES

Rule provision	Impact to royalty collections	Federal portion	State portion
Index-Based Valuation Method Extended to Arm's-Length Gas Sales	\$6,800,000	\$4,180,000	\$2,620,000
Index-Based Valuation Method Extended to Arm's-Length NGL Sales	660,000	430,000	230,000
High to Midpoint Index Price for Non-Arm's-Length Gas Sales	5,060,000	3,110,000	1,950,000
Transportation Deduction Non-Arm's-Length Index-Based Valuation Method	8,030,000	4,930,000	3,100,000
Extraordinary Processing Allowance	11,130,000	5,680,000	5,450,000
Allowance for Certain OCS Gathering Costs	32,900,000	31,320,000	1,580,000
Total	64,600,000	49,700,000	14,900,000

Note: totals may not add due to rounding.

Federal Oil and Gas Amendments With No Estimated Change to Royalty or Regulatory Costs

Change 1: Eliminate Reference to Default Provision Requirements for Federal Oil and Gas

The 2020 Rule removed the default provision from its regulations. In instances of misconduct, breach of a lessee's duty to market, or other situations where royalty value cannot be determined under the rules, ONRR can use statutory authority to determine Federal oil and gas royalty value under lease terms, FOGMA, and other authorizing legislation in the same manner—as ONRR would have prior to adoption of the 2016 Valuation Rule. There is no impact to royalty collections on account of the default provision regardless of whether the Final 2020 Rule goes into effect or is withdrawn in whole or part.

Federal and Indian Coal

In the 2020 Rule, ONRR estimated there will be no change to royalty collections for the Federal Government, Tribes, individual Indian mineral owners, States, or industry for Federal and Indian coal. ONRR has not changed or adjusted this estimate in this proposed rule. There is no impact to royalty collections on account of the coal provisions in the 2020 Rule regardless of whether the 2020 Rule goes into effect or is withdrawn in whole or part.

IV. Request for Public Comments

ONRR is proposing to withdraw the 2020 Rule. For ONRR's consideration, before reaching a final decision on this action, ONRR requests comments, without limitation, on this proposed action. ONRR is also requesting any comments pertaining to the substance or merits of the 2020 Rule, and the prior regulatory scheme it replaced. Additionally, ONRR seeks public comment on the following:

1. Should ONRR withdraw only the deepwater gathering allowance, extraordinary processing allowance, and/or index-based valuation provisions of the 2020 Rule, all of which reduce royalties; withdraw all royalty valuation provisions of the 2020 Rule; or allow all royalty valuation provisions 2020 Rule to go into effect?

2. Should ONRR allow some or all of the 2020 Rule's civil penalty amendments, at 30 CFR part 1241, to go into effect? Or should ONRR withdraw those amendments, and, if so, should it initiate a new civil penalty rulemaking on the same or different subjects?

3. What impacts, if any, or other information should ONRR consider if it were to adopt a final rule to either withdraw the deepwater gathering allowance, extraordinary processing allowance, and index-based valuation amendments of the 2020 Rule, or withdraw the 2020 Rule in its entirety, and make the withdrawal effective

immediately upon publication under 5 U.S.C. 553(d)(1) or (3)?

4. This proposed rule provides a revised economic analysis of the Final 2020 Rule's amendments to the index-based valuation method. The updated analysis shows the net impact of the amendments is an estimated decrease of \$20.6M in royalty collection per year (from table above, \$6,800,000 + \$660,000 + \$5,062,000 + \$8,033,000). Because the new analysis is presented for the first time in this rule, the public has not been given an opportunity to comment on the new analysis. ONRR invites public comment on the new information, methods ONRR used to perform its estimates, and whether it justifies withdrawal of some or all of the Final 2020 Rule's amendments to index-based valuation.

V. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs ("OIRA") of OMB will review all significant rulemakings. This proposed rule is a significant regulatory action under E.O. 12866. Because the primary effect is on royalty payments, ONRR expects that withdrawal of the 2020 Rule will largely result in transfers, which are described in the table below. ONRR also anticipates that withdrawal of the 2020 Rule would result in annual administrative cost savings of \$2.85

million and a one-time administrative cost of \$4.52 million.

Please note that, unless otherwise indicated, numbers in the tables in this section are rounded to the nearest

thousand, and that the totals may not match due to rounding.

SUMMARY OF ESTIMATED CHANGES TO ROYALTY COLLECTIONS FROM WITHDRAWAL OF 2020 RULE [Annual]

Rule provision	Net change in royalties paid by lessees
Index-Based Valuation Method Extended to Arm's-Length Gas Sales	\$6,800,000
Index-Based Valuation Method Extended to Arm's-Length NGL Sales	660,000
High to Midpoint Index Price for Non-Arm's-Length Gas Sales	5,062,000
Transportation Deduction Non-Arm's-Length Index-Based Valuation Method	8,033,000
Extraordinary Processing Allowances	11,131,000
Allowances for Certain OCS Gathering Costs	32,900,000
Total	64,600,000

To estimate the present value of potential administrative costs/savings to industry from withdrawal of the 2020 Rule, ONRR looked at two potential time periods to represent various

production lives of oil and gas leases. ONRR applied three percent and seven percent discount rates as described in OMB Circular A-4, using a base year of 2021 and reported in 2020 dollars. As

described above, ONRR estimates a cost to industry in the first year the 2020 Rule is in effect and incursion of administrative cost savings each year thereafter.

SUMMARY OF ANNUAL ADMINISTRATIVE IMPACTS TO INDUSTRY FROM WITHDRAWAL OF 2020 RULE

Rule provision	Cost (cost savings)
Administrative Cost Savings for Index-Based Valuation Method for Arm's-Length Gas & NGL Sales	\$1,077,000
Administrative Cost for Allowances for Certain OCS Gathering	(3,931,000)
Total	(2,850,000)

SUMMARY OF ONE-TIME ADMINISTRATIVE IMPACTS TO INDUSTRY FROM WITHDRAWAL OF 2020 RULE

Rule provision	Cost
Administrative Cost-Savings in lieu of Unbundling related to Index-Based Valuation Method for ARMS Gas & NGLs	\$4,520,000

NET PRESENT VALUE OF ADMINISTRATIVE IMPACTS TO INDUSTRY FROM WITHDRAWAL OF 2020 RULE

Time horizon	3% Discount rate	7% Discount rate
Administrative Costs over 10 years	\$19,920,000	\$15,790,000
Administrative Costs over 20 years	38,010,000	25,970,000

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the most innovative and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow

for public participation and an open exchange of ideas. ONRR developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires Federal agencies to prepare a regulatory flexibility analysis for rules that are subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553), if the rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 601–612.

For the changes to 30 CFR part 1206, this rule would affect lessees of Federal oil and gas leases. For the changes to 30 CFR part 1241, this rule could affect alleged and actual violators of obligations under Federal and Indian mineral leases. Federal and Indian mineral lessees are, generally, companies classified under the North American Industry Classification System ("NAICS"), as follows:

- Code 2111, Oil and Gas Extraction; and
- Code 21211, Coal Mining.

Under NAICS code classifications, a small company is one with fewer than 500 employees. ONRR estimates that

approximately 1,208 different companies submit royalty reports for Federal oil and gas leases and other Federal mineral leases to ONRR each month. Of these, approximately 106 companies are not considered small businesses because they exceed the employee count threshold for small businesses. ONRR estimated that the remaining 1,102 companies affected by this rule are small businesses. ONRR has not changed the determination it made in the 2020 Rule. See 86 FR 4651.

As stated in the Summary of Royalty Impacts and Costs Table, shown above, withdrawal of the 2020 Rule would impact industry through an increase in royalties of approximately \$64.6 million per year. Small businesses account for approximately eight percent of those royalties. Applying that percentage, ONRR estimates that withdrawal of the 2020 Rule would increase royalty payments made by small-business lessees by approximately \$5.2 million per year, or \$4,690 per small business, on average. The extent of any royalty impact would vary between companies due to, for example, differences in the revenues generated by a small business that is subject to royalties.

Also stated above, withdrawal of the 2020 Rule would impact industry through a decrease in administrative costs of approximately \$2.9 million per year and a first-year increase of \$4.5 million. Applying the eight percent small-business share, ONRR estimates that withdrawal of the 2020 Rule would decrease administrative costs to small business lessees by approximately \$211 per year and separately increase costs by \$327 in the first year.

In 2020, ONRR collected \$6.3 billion in royalties from Federal oil and gas leases. Applying the eight-percent share, ONRR estimates that small-business lessees paid \$504 million in royalties in 2020. Most Federal oil and gas leases have a 12.5 percent royalty rate, which calculates to an estimated \$4 billion in total small-business lessee revenue from the production and sale of Federal oil and gas (\$504 million divided by .125). Thus, on average, ONRR estimates that small-business lessees earn \$3.6 million in revenue per year from the production and sale of Federal oil and gas (\$4 billion divided by 1,102).

The estimated increase in royalties (\$4,690) and decrease in administrative burden (\$211) net to an increase in overall cost to 1,102 small businesses of \$4,479 per year. As a percentage of average small-business revenue, this proposed rule would increase costs to those entities by 0.12 percent (\$4,479 divided by \$3.6 million).

According to the U.S. Census Bureau's 2017 Economic Census data, oil and gas extractors with 20 employees or less collected \$2.1 million per year per entity. Taking the \$4,479 discussed above, divided by \$2.1 million equals an estimated maximum impact of 0.2 percent of total revenue per year. Further, ONRR anticipates that the smallest entities would realize less of an increase in royalties because, for example, the changes to deepwater gathering and extraordinary processing allowances are capital-intensive operations that small entities typically do not participate in.

In accordance with 5 U.S.C. 605, the head of the agency certifies that this proposed rule would have an impact on a substantial number of small entities, but the economic impact on those small entities would not be significant under the Regulatory Flexibility Act. Thus, ONRR did not prepare a Regulatory Flexibility Act Analysis nor is a Small Entity Compliance Guide required.

C. Small Business Regulatory Enforcement Fairness Act

The 2020 Rule was not a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 804(2). ONRR therefore expects that the withdrawal of the 2020 rule would likewise not be a major rule under that provision. Like the 2020 rule, ONRR anticipates that this rule, if finalized:

(1) Would not have an annual effect on the economy of \$100 million or more. ONRR estimates that the cumulative effect on all of industry if the 2020 Rule goes into effect would be a reduction in private cost of nearly \$61.45 million per year, which is the sum of \$64.6 million in decreased royalty payments and \$2.85 million in additional costs due to increased administrative burdens. This net change in royalty payments would be a transfer rather than a cost or cost savings. The Summary of Royalty Impacts and Costs Table, as shown above, demonstrates that the 2020 Rule's cumulative economic impact on industry, State and local governments, and the Federal Government would be well below the \$100 million threshold that the Federal Government uses to define a rule as having a significant impact on the economy;

(2) would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Please see the data tables in the Regulatory Planning and Review (E.O. 12866 and E.O. 13563) section above; and

(3) would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. ONRR estimates no significant adverse impacts to small business.

D. Unfunded Mandates Reform Act

Neither the 2020 Rule nor its withdrawal would impose an unfunded mandate or have a significant effect on State, local, or Tribal governments, or on the private sector, of more than \$100 million per year. Therefore, ONRR is not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires because the 2020 Rule or its withdrawal is an unfunded mandate.

E. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, neither the 2020 Rule nor its withdrawal have any significant takings implications. Neither rule imposes conditions or limitations on the use of any private property because they apply to the valuation of Federal oil and gas and Federal and Indian coal only. The 2020 Rule only makes minor technical changes to ONRR's civil penalty regulations that have no expected economic impact, and the withdrawal of the 2020 Rule would have no economic impact. Neither rule requires a takings implication assessment.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, the 2020 Rule or its withdrawal does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The management of Federal oil and gas is the responsibility of the Secretary, and ONRR distributes all of the royalties that it collects under Federal oil and gas leases as directed by the relevant disbursement statutes. The 2020 Rule or its withdrawal would not impose administrative costs on States or local governments or substantially and directly affect the relationship between the Federal and State governments. Thus, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

The proposed withdrawal of the 2020 Rule complies with the requirements of E.O. 12988. Specifically, the proposed withdrawal rule:

(1) Meets the criteria of Section 3(a), which requires that ONRR review all regulations to eliminate errors and ambiguity to minimize litigation; and

(2) meets the criteria of Section 3(b)(2), which requires that all regulations be written in clear language using clear legal standards.

H. Consultation With Indian Tribal Governments (E.O. 13175)

ONRR 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. ONRR evaluated the 2020 Rule and the proposed withdrawal under the Department's consultation policy and the criteria in E.O. 13175 and determined that neither have substantial direct effects on Federally-recognized Indian tribes. Thus, consultation under ONRR's tribal consultation policy is not required.

ONRR reached this conclusion, in part, based on the consultations it conducted before the adoption of the 2016 Valuation Rule. At that time, ONRR held six tribal consultations with the three tribes (Navajo Nation, Crow Nation, and Hopi Tribe) for which ONRR collected and disbursed Indian coal royalties. Upon the conclusion of each consultation, ONRR and the tribal partners determined that the 2016 Valuation Rule would not have a substantial impact on any of the potentially impacted tribes. With the exception of the Kayenta Mine located in Navajo Nation, which ceased production in 2019, the circumstances relevant to the Indian coal leases have not changed since the prior consultations occurred. As with the 2016 Valuation Rule, ONRR's review of the royalty impact to tribes from the 2020 Rule and its proposed withdrawal concludes that neither would substantially impact the three tribes. Further, neither rule is estimated to impact the royalty value of Indian coal.

I. Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Certain collections of information require OMB's approval under the Paperwork Reduction Act. The 2020 Rule and its proposed withdrawal do not require any new or modify any existing information collections subject to OMB's approval. Thus, ONRR did not submit any new information collection requests to OMB related to the 2020 Rule or its proposed withdrawal.

Both the 2020 Rule and its proposed withdrawal leave intact the information collection requirements that OMB has already approved under OMB Control Numbers 1012-0004, 1012-0005, and 1012-0010.

J. National Environmental Policy Act of 1969

The 2020 Rule and its proposed withdrawal do not constitute a major Federal action significantly affecting the quality of the human environment. ONRR is not required to provide a detailed statement under the NEPA because both rules qualify for a categorical exclusion under 43 CFR 46.210(c) and (i), as well as the Departmental Manual, part 516, section 15.4.D, which covers routine financial transactions including such things as audits, fees, bonds, and royalties and policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature. ONRR also determined that both the 2020 Rule and its proposed withdrawal do not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

Both the 2020 Rule and its proposed withdrawal are not significant energy actions under the definition in E.O. 13211. Neither is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Moreover, the Administrator of OIRA has not otherwise designated either action as a significant energy action. A Statement of Energy Effects pursuant to E.O. 13211, therefore, is not required.

L. Clarity of This Regulation

E.O. 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), E.O. 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, require ONRR to write all rules in plain language. This means that the rules ONRR publishes must use:

- (1) Logical organization.
- (2) Active voice to address readers directly.
- (3) Clear language rather than jargon.
- (4) Short sections and sentences.
- (5) Lists and tables wherever possible.

If you believe that ONRR has not met these requirements, send your comments to ONRR.RegulationsMailbox@onrr.gov. To better help ONRR understand your comments, please make your comments as specific as possible. For example, you should tell ONRR the numbers of the sections or paragraphs that you think were written unclearly, the sections or sentences that you think are too long, and the sections for which you believe lists or tables would be useful.

This action is taken pursuant to delegated authority.

List of Subjects

30 CFR Part 1206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1241

Administrative practice and procedure, Coal, Geothermal energy, Indians-lands, Mineral royalties, Natural gas, Oil and gas exploration, Penalties, Public lands-mineral resources.

Rachael S. Taylor,

Principal Deputy Assistant Secretary—Policy, Management and Budget.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0221; FRL-10024-71-Region 4]

Air Plan Approval; TN; Knoxville Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

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 Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, via a letter dated January 23, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Knoxville, Tennessee Area (hereinafter referred to as the "Knoxville Area" or "Area"). The Knoxville Area, as defined in this proposed action, is comprised of Jefferson, Loudon, and Sevier Counties in their entireties, the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park, and a portion of Anderson County that excludes the area surrounding TVA Bull Run Fossil Plant. EPA is proposing to approve the Knoxville Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Knoxville Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to

maintenance of the 1997 8-hour ozone NAAQS in the Knoxville Area federally enforceable as part of the Tennessee SIP.

DATES: Written comments must be received at the address below on or before July 12, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0221 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:

Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to

approve the Knoxville Area LMP for the 1997 8-hour ozone NAAQS, adopted by TDEC on January 8, 2020, and submitted by TDEC as a revision to the Tennessee SIP on January 23, 2020. In 2004, the Tennessee counties of Anderson, Blount, Knox, Jefferson, Loudon, and Sevier in their entirety, and a portion of Cocke County were designated as nonattainment for the 1997 8-hour ozone NAAQS (hereinafter referred to as the "Knoxville 1997 NAAQS Area").¹ Subsequently, in 2011, after a clean data determination² and EPA's approval of a maintenance plan, the Knoxville 1997 NAAQS Area was redesignated to attainment for the 1997 8-hour ozone NAAQS.

The Knoxville Area LMP, submitted by TDEC on January 23, 2020, is designed to maintain the 1997 8-hour ozone NAAQS within the Knoxville Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A.

As a general matter, the Knoxville Area LMP relies on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by TDEC for the first 10-year period.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_x) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung

disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.³

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).⁴ EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Knoxville 1997 NAAQS Area, which is comprised of Anderson, Blount, Knox, Jefferson, Loudon, and Sevier Counties in their entirety, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park, as nonattainment for the 1997 8-hour ozone NAAQS, and the designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004). Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated Blount and Knox Counties and the portion of Anderson County surrounding the TVA Bull Run Fossil Plant as nonattainment for the 2008 8-hour ozone NAAQS and classified as a marginal nonattainment area (hereinafter referred to as the "Knoxville 2008 NAAQS Area"). This designation became effective on July 20,

³ *See* "Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone," January 6, 2010, and 75 FR 2938 (January 19, 2010).

⁴ In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

¹ The "Knoxville Area" is a subset of the "Knoxville 1997 NAAQS Area", which is further defined later in this action.

² *See* 75 FR 62470 (October 12, 2010).

2012.⁵ In addition, on November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The Knoxville 1997 NAAQS Area⁶ was designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date on January 16, 2018.⁷

A state may submit a request to redesignate a nonattainment area that is attaining a NAAQS to attainment, and, if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.⁸ One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.*, ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans.⁹ The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.*, attainment year inventory). See Calcagni memo at page 9. EPA clarified in three subsequent

guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value¹⁰ being significantly below the standard and the area having a historically stable design value.¹¹ EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: An attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,¹² EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.¹³

In this case, EPA is proposing to approve Tennessee's LMP because the State has made a showing, consistent

with EPA's prior LMP guidance, that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it has met the other maintenance plan requirements. TDEC submitted this LMP for the Knoxville Area to fulfill the second maintenance plan requirement in the Act. EPA's evaluation of the Knoxville Area's LMP is presented below.

In July of 2010, TDEC submitted to EPA a request to redesignate the Knoxville 1997 NAAQS Area to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in the Knoxville 1997 NAAQS Area through 2024 as a revision to the Tennessee SIP. EPA approved the Knoxville 1997 NAAQS Area's Maintenance Plan and the State's request to redesignate the Knoxville 1997 NAAQS Area to attainment for the 1997 8-hour ozone NAAQS effective March 8, 2011.¹⁴

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.*, maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).¹⁵ On July 13, 2015, EPA redesignated the Knoxville 2008 NAAQS Area as attainment for the 2008 8-hour ozone NAAQS, and the designation became effective on August 12, 2015. See 80 FR 39970 (July 13, 2015).

In *South Coast Air Quality Management District v. EPA*, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for "orphan maintenance areas," *i.e.*, areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast*, 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these "orphan maintenance areas" under the 1997 8-hour ozone NAAQS must submit maintenance plans for the

¹⁰ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

¹¹ See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, OAQPS, dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

¹² The prior memos addressed: Unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM₁₀ (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide (CO) NAAQS.

¹³ See, *e.g.*, 79 FR 41900 (July 18, 2014) (Approval of the second ten-year LMP for the Grant County 1971 SO₂ maintenance area).

¹⁴ See 76 FR 12587 (March 8, 2011).

¹⁵ See 80 FR 12315 (March 6, 2015).

⁵ See 77 FR 30088.

⁶ The "Knoxville 1997 NAAQS Area" encompasses both the "Knoxville Area" and the "Knoxville 2008 NAAQS Area".

⁷ See 82 FR 54232 (Nov. 16, 2017).

⁸ Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

⁹ John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards (OAQPS), "Procedures for Processing Requests to Redesignate Areas to Attainment," September 4, 1992 (Calcagni memo).

second maintenance period. Accordingly, on January 23, 2020, Tennessee submitted a second maintenance plan for the Knoxville Area that shows that the Area is expected to remain in attainment of the 1997 8-hour ozone NAAQS through 2031.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Knoxville Area well below the 1997 8-hour ozone NAAQS, TDEC chose the LMP option for the development of its second 1997 8-hour ozone NAAQS maintenance plan. On January 8, 2020, TDEC adopted the second 10-year 1997 8-hour ozone maintenance plan, and on January 23, 2020, TDEC submitted the Knoxville Area LMP to EPA as a revision to the Tennessee SIP.

III. Tennessee's SIP Submittal

As mentioned above, on January 23, 2020, TDEC submitted the Knoxville Area 1997 8-Hour Ozone NAAQS LMP to EPA as a revision to the Tennessee SIP. The submittal includes the LMP, air quality data, emissions inventory information, and appendices as well as certification of adoption of the plan by TDEC. Appendices to the plan include comments and responses between EPA and TDEC; documentation of notice,

hearing, and public participation prior to adoption of the plan by TDEC on January 8, 2020; interagency consultation; and Air Pollution Control Board order, which notes that Tennessee's LMP submittal for the remainder of the 20-year maintenance period for the Knoxville Area is in response to the D.C. Circuit's decision overturning aspects of EPA's Implementation Plan rule. The Knoxville Area LMP does not include any additional emissions reduction measures but relies on the same emissions reduction strategy as its first 10-year Maintenance Plan that provides for the maintenance of the 1997 8-hour ozone NAAQS through 2024. Specifically, the measures upon which the second 10-year LMP for the Knoxville Area relies include the continuation of the stage 1 gasoline vapor recovery rule and a statewide Motor Vehicle Tampering rule in Chapter 1200–03–36. It also relies on continued implementation of federal measures (e.g., interstate transport rules such as Cross State Air Pollution Rule (CSAPR)¹⁶ and CSAPR Update¹⁷).

IV. EPA's Evaluation of Tennessee's SIP Submittal

EPA has reviewed the Knoxville Area's LMP which is designed to

maintain the 1997 8-hour ozone NAAQS within the Knoxville Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 175A requirements¹⁸ and EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO_x, as these pollutants are precursors to ozone formation. The Knoxville Area's LMP includes an ozone attainment inventory for the Knoxville Area that reflects typical summer day emissions in 2014. Table 1 and Table 2 present a summary of the inventory for 2014 contained in the LMP.

TABLE 1—2014 TYPICAL SUMMER DAY 8-HOUR NO_x EMISSIONS FOR THE KNOXVILLE AREA
[Tons/summer day]

County	Fire	Nonpoint	Nonroad	Onroad	Point	Total
Anderson	* 0.00	1.70	0.81	5.35	4.93	12.79
Cocke	** 0.00	0.39	0.41	3.34	0.09	* 4.23
Jefferson	* 0.00	0.56	1.05	7.97	0.00	9.58
Loudon	* 0.00	0.64	0.77	5.45	2.31	9.17
Sevier	0.09	0.23	0.90	6.05	0.16	* 7.43
Total	0.09	3.52	3.94	* 28.16	7.49	* 43.20

* These total emissions values for both NO_x and VOC, respectively, differ from Tennessee's submittal and have been re-calculated to accurately reflect the total for each sector and county.¹⁹

** The values, while greater than zero, do not meet the two significant figure rounding convention.

TABLE 2—2014 TYPICAL SUMMER DAY 8-HOUR VOC EMISSIONS FOR THE KNOXVILLE AREA
[Tons/summer day]

County	Fire	Nonpoint	Nonroad	Onroad	Point	Total
Anderson	* 0.00	6.79	1.85	3.14	0.64	12.42
Cocke	** 0.00	1.67	2.44	1.47	0.31	* 5.89
Jefferson	* 0.00	2.80	2.90	2.57	0.26	8.53
Loudon	* 0.00	2.03	1.93	2.08	4.55	* 10.59
Sevier	1.43	2.76	6.72	3.31	0.03	* 14.25
Total	1.43	16.05	* 15.84	* 12.57	5.79	* 51.68

* These total emissions values for both NO_x and VOC, respectively, differ from Tennessee's submittal and have been re-calculated to accurately reflect the total for each sector and county.²⁰

¹⁶ See 76 FR 48208 (August 8, 2011).

¹⁷ See 81 FR 74504 (October 26, 2016).

¹⁸ See Calcagni memo.

¹⁹ See email from James Johnston, TDEC, to Lynorae Benjamin, EPA Region 4 (December 15, 2020), available in the docket for this proposed rulemaking.

²⁰ See email from James Johnston, TDEC, to Lynorae Benjamin, EPA Region 4 (December 15, 2020), available in the docket for this proposed rulemaking.

** The values, while greater than zero, do not meet the two significant figure rounding convention.

The Emissions Inventory section of the Knoxville Area's LMP describes the methods, models, and assumptions used to develop the attainment inventory. As described in the Emissions Inventory section of the LMP, TDEC generally relied upon emissions inventory information from the EPA 2014 version 7.0 air quality modeling platform (2014v7.0 platform), which is based on the 2014 NEI. The emissions data in the 2014v7.0 platform are primarily based on the 2014NEIv1 for point sources, nonpoint sources, commercial marine vessels (CMV), onroad and nonroad mobile sources, and fires. This 2014 modeling platform includes all criteria air pollutants (CAPs) and precursors and two groups of hazardous air pollutants (HAPs).

Nonroad mobile source emissions in the 2014NEIv1, in part, were estimated using the latest available version of EPA's motor vehicle emissions model, MOVES 2014a (which includes estimates of nonroad emissions like agriculture, commercial and mining, industrial and recreational equipment, and commercial and residential lawn and garden equipment). Locomotives, aircraft, and marine nonroad sources are not included in MOVES, and TDEC relied on EPA-generated emissions for these sectors.²¹ Onroad mobile sources in the 2014NEIv1, were estimated using MOVES2014a and the latest planning assumptions regarding vehicle type, activity, and vehicle speeds to estimate vehicular emissions for 2014.

MOVES2014a was used with inputs, where provided, by state and local agencies, in combination with EPA-generated default data. In its entirety, the 2014v7.0 platform estimates for vehicles reflect emissions inventories and ancillary data files used for emissions modeling, as well as the meteorological, initial condition, and boundary condition files need to run the air quality model.

B. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in a LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.²² These criteria are evaluated below with regard to the Knoxville Area.

1. Evaluation of Ozone Air Quality Levels

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. At the time of submission, EPA evaluated quality assured and

certified 2016–2018 monitoring data and determined that the design value for the Knoxville Area was 0.067 ppm, or 80 percent of the level of the 1997 8-hour ozone NAAQS. Based on quality assured and certified monitoring data for 2018–2020, the current design value for the Knoxville Area is 0.063 ppm, or 75 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (e.g., below 85 percent of the NAAQS, or in this case below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 3 presents the design values for each monitor in the Knoxville Area over the 2008–2020 period. As shown in Table 3, all sites have been below the level of the 1997 8-hour ozone NAAQS since the area was redesignated to attainment, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 3—1997 8-HOUR OZONE NAAQS DESIGN VALUES (ppm) AT MONITORING SITES IN THE KNOXVILLE 1997 NAAQS AREA FOR THE 2008–2020 TIME PERIOD

Location	County	AQS site ID	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV
Freels Bend	Anderson	47–001–0101	0.07	0.07	0.073	0.069	(*)	0.061	0.063	0.064	0.064	0.064	0.061
Look Rock	Blount	47–009–0101	0.077	0.077	0.079	0.074	0.067	0.065	0.067	0.067	0.067	0.065	0.063
Cades Cove	Blount	47–009–0102	0.069	0.068	0.068	0.063	0.060	0.059	0.060	0.061	0.062	0.060	0.058
New Market	Jefferson	47–089–0002	0.074	0.073	0.078	0.073	0.071	0.067	0.068	0.067	0.066	0.065	0.063
East Knox	Knox	47–093–0021	0.071	0.069	0.071	0.067	0.063	0.061	0.064	0.064	0.065	0.063	0.061
Spring Hill	Knox	47–093–1020	0.076	0.071	0.074	0.070	0.067	0.063	0.066	0.067	0.067	0.063	0.058
Loudon + ...	Loudon	47–105–0109	0.073	0.072	0.075	0.070	0.068	0.066	0.069	0.068	0.067	0.063	0.062
Cove Mountain	Sevier	47–155–0101	0.076	0.075	0.076	0.072	0.068	0.067	0.067	0.066	0.066	0.065	0.063
Clingman's Dome ^.	Sevier	47–155–0102	^0.076	^0.075	^0.075	^0.071	^0.067	^0.065	^0.066	^0.065	^0.065	^0.063	0.063

* Incomplete design value due to annual values not meeting completeness criteria.

+ On March 16, 2016, the EPA approved the relocation of the Loudon Pope monitoring site (AQS ID 47–105–0108) to the Loudon Elementary School monitoring site (AQS ID 47–105–0109). The ozone monitor was relocated to the Loudon Elementary School site on March 3, 2017. The EPA approved the calculation of a combined DV for the Loudon Pope site and the Loudon Elementary School site. Design values prior to 2017 are calculated using data from the Loudon Pope monitoring site.²³

^ The Clingman's Dome site has limited accessibility and difficulty in using the site's solar power system during the winter months. Due to the limited access in the first two months of the ozone season, annual design values did not meet data completeness. A waiver for a delayed ozone season starting no later than May 1 for the Clingman's Dome monitor was submitted by the National Park Service on April 28, 2016, and approved by EPA on May 3, 2016.

²¹ EPA developed emissions for these sectors based on AP–42 emissions factors, and information supplied by the Eastern Regional Technical Advisory Committee for locomotives and Federal Aviation Administration's Emissions and

Dispersion Modeling System (since replaced by the Aviation Environmental Design Tool).

²² See footnote 9.

²³ In the 2017 Annual Network Plan approval letter, EPA approved a combined design value for

ozone monitors 47–105–0108 and 47–105–0109 in Loudon County due to relocation of monitor. EPA's approval letter of the 2017 Annual Network Plan can be found in the docket for this action.

Therefore, the Knoxville Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_x emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Knoxville Area through the second 10-year maintenance period and beyond.

Additional supporting information that the Area is expected to continue to maintain the NAAQS can be found in projections of future year design values that EPA recently completed to assist states with development of interstate transport SIPs for the 2015 ozone NAAQS.²⁴ Those projections, made for the year 2023, show that the highest design value of any monitor in the Knoxville Area is expected to be 0.058 ppm.

2. Stability of Ozone Levels

As discussed above, the Knoxville Area has maintained air quality well below the 1997 8-hour ozone NAAQS over the past eleven years. Additionally, the design value data shown within Table 3 illustrates that ozone levels have been relatively stable over this

timeframe, with a modest downward trend. For example, the data within Table 3 indicates that the largest, year over year change in design value at any one monitor during these eleven years was five parts per billion which occurred between the 2009–2011 design value and the 2010–2012 design value as an increase, representing only a seven percent change, and between the 2017–2019 design value and the 2018–2020 design value as a decrease, representing an eight percent change. Furthermore, the overall trend in design values for the Knoxville 1997 NAAQS Area between 2008–2020 shows a decrease of 17 to 18 percent at the three highest monitors, Cove Mountain monitor 47–155–0101, Clingman’s Dome monitor 47–155–0102, and Blount County monitor 47–009–0101 respectively. This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Knoxville Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

3. Projected Emissions

Although under the LMP option there is no requirement to project emissions

over the maintenance period, TDEC included an analysis of ozone precursor emissions trends expected over the course of the second maintenance plan. TDEC provided a VOC and NO_x emissions trends analysis from 2014 to 2028. Tennessee selected 2014 as a baseline for the projection because that was the most recent year for which a complete set of data was available from the EPA’s National Emissions Inventory (NEI) database at the time that the State developed its second maintenance plan for the Area.²⁵ Projected emissions data for the year 2028 were obtained from EPA,²⁶ and these data represent EPA emissions projections that are available for a date furthest out into the future.²⁷ The emissions projection trends show that between 2014 and 2028, VOC emissions are estimated to fall by 40 percent, and NO_x emissions are estimated to fall by 38 percent within the Knoxville Area. These projected declining emissions trends further support the conclusion that it is unlikely that the Knoxville Area would violate the 1997 8-hour ozone NAAQS in the future. Table 4 and Table 5 present a summary of projected emissions for 2028 contained in the maintenance plan.

TABLE 4—2028 TYPICAL SUMMER DAY 8-HOUR NO_x EMISSIONS FOR THE KNOXVILLE AREA
[Tons/summer day]

County	Fire	Nonpoint	Nonroad	Onroad	Point	Total
Anderson	** 0.00	4.39	0.47	1.29	6.69	12.84
Cocke	0.02	0.37	0.28	1.21	0.04	* 1.92
Jefferson	* 0.00	0.62	0.74	3.04	0.08	* 4.48
Loudon	* 0.00	0.84	0.49	2.26	1.60	* 5.19
Sevier	0.04	0.31	0.57	1.27	0.12	* 2.31
Total	* 0.06	6.53	2.55	9.07	8.53	* 26.74

* These total emissions values for both NO_x and VOC, respectively, differ from Tennessee’s submittal and have been re-calculated to accurately reflect the total for each sector and county.¹⁹

** The values, while greater than zero, do not meet the two significant figure rounding convention.

TABLE 5—2028 TYPICAL SUMMER DAY 8-HOUR VOC EMISSIONS FOR THE KNOXVILLE AREA
[Tons/summer day]

County	Fire	Nonpoint	Nonroad	Onroad	Point	Total
Anderson	** 0.00	5.75	1.19	0.70	0.95	* 8.59
Cocke	0.22	1.33	1.45	0.41	0.35	* 3.76
Jefferson	* 0.00	2.23	1.37	0.76	0.16	4.52
Loudon	* 0.00	1.96	1.09	0.71	1.61	5.37
Sevier	0.45	3.11	4.25	0.89	0.02	8.72

²⁴ See the spreadsheet titled “Ozone Monitoring Site Design Values for 2008 through 2017 and for 2023” at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naqs>.

²⁵ The 2017 NEI is the most recent NEI, but it was unavailable to Tennessee when the State developed its SIP revision.

²⁶ <https://www.epa.gov/air-emissions-modeling/2014-2016-version-7-air-emissions-modeling-platforms>.

²⁷ EPA’s emissions projections to 2028 were made from the 2011 NEI, as that iteration of the NEI was the most recently available version when the projection work was performed. Although this projection does not correspond exactly with the end

of the second ten-year maintenance period, it provides additional support for EPA’s proposed finding that the Area will maintain the NAAQS due to its low and historically stable design values. See the Emissions Inventory section of the LMP for additional information regarding the 2028 projections.

TABLE 5—2028 TYPICAL SUMMER DAY 8-HOUR VOC EMISSIONS FOR THE KNOXVILLE AREA—Continued
[Tons/summer day]

County	Fire	Nonpoint	Nonroad	Onroad	Point	Total
Total	0.67	14.38	* 9.35	* 3.47	* 3.09	* 30.96

* These total emissions values for both NO_x and VOC, respectively, differ from Tennessee's submittal and have been re-calculated to accurately reflect the total for each sector and county.¹⁹

** The values, while greater than zero, do not meet the two significant figure rounding convention.

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring network that TDEC operates and maintains in accordance with 40 CFR part 58. This network plan, which is submitted annually to EPA, is consistent with the ambient air quality monitoring network assessment. The annual network plan developed by TDEC follows a public notification and review process. EPA has reviewed and approved the State's 2020 Ambient Air Monitoring Network Plan ("2020 Annual Network Plan").²⁸

To verify the attainment status of the Area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, TDEC's monitoring network in the Knoxville 1997 NAAQS Area has been approved by EPA in accordance with 40 CFR part 58, and the State has committed to continue to maintain a network in accordance with EPA requirements. EPA therefore proposes to find that TDEC's monitoring network is adequate to verify continued attainment of the 1997 8-hour ozone NAAQS in the Knoxville Area.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period. These contingency measures are required to be implemented expeditiously once they are triggered by a future violation of the NAAQS or some other trigger. The state should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The LMP states that the trigger is a Quality Assured/Quality Controlled (QA/QC) violating design value of the 1997 8-hour ozone NAAQS in the

Knoxville Area.²⁹ If this trigger is activated, the maintenance plan requires Tennessee to conduct a study to determine the cause of the higher ozone value, whether from an event not likely to recur or from an increasing trend in emissions that threatens the continued maintenance of the NAAQS. Tennessee will adopt and implement appropriate contingency measures tailored to the source of the violation (or increased concentrations) as expeditiously as practicable, but no later than 18 to 24 months after the trigger event.³⁰

EPA proposes to find that the contingency provisions in Tennessee's second maintenance plan for the 1997 8-hour ozone NAAQS meet the requirements of the CAA section 175A(d).

E. Conclusion

EPA proposes to find that the Knoxville Area LMP for the 1997 8-hour ozone NAAQS includes an approvable update of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved Maintenance Plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Knoxville Area, qualifies for the LMP option, and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels below the NAAQS and historically stable design values. EPA believes the Knoxville Area's LMP, which retains all existing control measures in the SIP, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Knoxville Area over the second maintenance

period (*i.e.*, through 2031) and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Tennessee's January 23, 2020, submission of the Knoxville Area's LMP as a revision to the Tennessee SIP.

V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93 subpart A requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as "the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions." *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). On September 15, 2010, EPA made a finding that the MVEBs for the first 10 years of the 1997 8-hour ozone maintenance plan for the Knoxville 1997 NAAQS Area were adequate for transportation conformity purposes. In a **Federal Register** notice dated September 15, 2010, EPA notified the public of that finding. *See* 75 FR 55977. This adequacy determination became

²⁸ The letter approving the network plan is in the docket for this proposed rulemaking.

²⁹ If QA/QC data indicates a violating design value for the 8-hour ozone NAAQS, then the triggering event will be the date of the design value violation, and not the final QA/QC date. However, if initial monitoring data indicates a possible design value violation but later QA/QC indicates that a NAAQS violation did not occur, then a triggering event will not have occurred, and contingency measures will not need to be implemented.

³⁰ *See* the Contingency Plan section of the LMP for further information regarding the contingency plan, including measures that Tennessee will consider for adoption if the trigger is activated.

effective on September 30, 2010. After approval of this LMP or an adequacy finding for this LMP, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the maintenance area. All actions that would require a transportation conformity determination for the Knoxville 1997 NAAQS Area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for this LMP. *See* 69 FR 40004 (July 1, 2004). The Knoxville 2008 NAAQS Area needs to continue to meet all of the applicable requirements of the transportation conformity regulations, including the need for a regional emissions analysis and comparison of the results of the regional emissions analysis to the applicable MVEB for the 2008 8-hour ozone NAAQS.

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113) as well as meet the hot-spot requirements for projects (40 CFR 93.116).³¹ Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115. The Knoxville 2008 NAAQS Area must continue to meet all of the applicable requirements of the general conformity regulations.

VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Knoxville Area's LMP for the 1997 8-hour ozone NAAQS, submitted by TDEC on January 23, 2020, as a revision to the

Tennessee SIP. EPA is proposing to approve the Knoxville Area LMP because it includes an acceptable update of the various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and retains the relevant provisions of the SIP.

EPA also finds that the Knoxville Area qualifies for the LMP option and that therefore the Knoxville Area's LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Knoxville Area's 1997 8-Hour Ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Knoxville Area over the second 10-year maintenance period, through 2031, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 4, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021-12164 Filed 6-10-21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2014-0471; FRL-10024-24-OAR]

RIN 2060-AS26

Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Having previously granted a public petition to add 1-bromopropane (1-BP) to the list of hazardous air

³¹ A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM₁₀, and fine particulate matter (PM_{2.5}) areas.

pollutants (HAP) under the Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) is soliciting information that will aid in addressing the impacts of the regulatory action. This is the first time that a substance will be added to the HAP list since the initial list was established by the 1990 CAA Amendments. The addition of 1-BP to the HAP list could have immediate regulatory compliance impacts to facilities that emit 1-BP. The EPA is soliciting data and information on 1-BP usage, emission controls, and costs to inform the process to address the implementation of the upcoming listing action and to ensure that the regulatory infrastructure is in place to effectively and efficiently control the emissions of 1-BP. The EPA is not soliciting comments on the decision that granted petitions to list 1-BP as a HAP and has not reopened that decision for comments.

DATES: *Comments.* Comments must be received on or before July 26, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2014-0471, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- *Email:* a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2014-0471 in the subject line of the message.
- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2014-0471.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2014-0471, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OAR-2014-0471 for this rulemaking. 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 **SUPPLEMENTARY INFORMATION** 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 the 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 questions about this action, contact Susan Miller, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2443; fax number: (919) 541-4991; and email address: miller.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has a docket for this document and the future listing action under Docket ID No. EPA-HQ-OAR-2014-0471. This docket is the same docket used during the petition process. All documents in the docket are listed in *Regulations.gov*. Although listed, 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. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2014-0471. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. 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, 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>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

The EPA has temporarily suspended 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>.

The 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.

Submitting CBI. Do not submit information containing CBI to the EPA

through <https://www.regulations.gov/> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2014-0471. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

1-BP 1-bromopropane (also known as n-propyl bromide or nPB)
 APCD air pollution control device
 CAA Clean Air Act
 CBI Confidential Business Information
 CFR Code of Federal Regulations
 EPA U.S. Environmental Protection Agency
 EPCRA Emergency Planning and Community Right-to-Know Act
 GACT generally available control technology
 HAP hazardous air pollutant(s)
 HAP list list of HAP under authority of section 112 of the CAA
 HSIA Halogenated Solvents Industry Alliance
 MACT maximum achievable control technology
 NESHAP national emission standards for hazardous air pollutants
 NYSDEC New York State Department of Environmental Conservation
 OCSPP Office of Chemical Safety and Pollution Prevention
 OMB Office of Management and Budget

PERC perchloroethylene
 PPA Pollution Prevention Act
 PTE potential to emit
 SBREFA Small Business Regulatory Enforcement Fairness Act
 TRI Toxics Release Inventory
 TSCA Toxic Substances Control Act

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Will this upcoming action apply to me?

The upcoming action to add 1-BP to the CAA section 112 list of hazardous air pollutants (HAP list) may result in regulatory obligations that will apply to your facility if it emits 1-BP. The types of regulatory compliance impacts will depend on several factors, including the amount of 1-BP used and the way that it is used (e.g., as a solvent in a plastic parts coating operation as compared to as a solvent in a dry cleaning machine) and the amount of 1-BP and other HAP emitted by your facility. In some instances, permits for planned construction, reconstruction, or modification of emissions sources at your facility could also be affected. There may also be impacts for regulatory authorities, including state, local, and tribal authorities, who are delegated the authority to implement national emission standards for hazardous air pollutants (NESHAP) under delegation and title V programs.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action

is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this action at <https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications#mods>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of this document and key technical documents at this same website.

II. Background

A. What is the HAP list?

The HAP list, which can be found in CAA section 112(b)(1), is a list of organic and inorganic substances that Congress identified as HAP in the 1990 CAA Amendments. These HAP are associated with a wide variety of adverse health effects, including, but not limited to cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with various HAP differ depending upon the toxicity of the individual HAP and the particular circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed, and the stage of life at which the person is exposed. Modifications to the HAP list are codified in 40 CFR part 63, subpart C.

Section 112(c)(1) of the CAA directs the EPA to first identify and list source categories that emit HAP listed pursuant to CAA section 112(b). Then, under CAA section 112(e)(1), the EPA was to set "emission standards for categories and subcategories as expeditiously as practicable" but no later than the overall deadline of November 15, 2000. CAA section 112(e)(1)(e). The EPA sets emissions standards under CAA section 112(d) for those listed source categories based on sources being characterized as "major" or "area."

A major source of HAP is defined under CAA section 112(a) as any "stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." Stationary sources of HAP that are not major sources are defined as "area sources." Standards promulgated under CAA section 112(d) are commonly referred to as NESHAP but are also frequently referred to as either maximum achievable control technology (MACT) standards or generally available control technology (GACT) standards. While MACT

standards are required for major sources and certain categories of area sources, the CAA allows for the use of GACT standards for most categories of area sources rather than specifically requiring MACT.

B. What is 1-BP?

The compound 1-bromopropane, or 1-BP, is also known as n-propyl bromide or nPB (CAS No. 106–94–5). The compound is a brominated organic colorless liquid that is insoluble in water but soluble in ethanol and ether. 1-BP has been classified as a probable human carcinogen, neurotoxicant, and is associated with adverse reproductive effects. In addition, it can produce acute health effects in humans, such as dizziness and nausea.¹ The vapor pressure for 1-BP is 146 millimeters of mercury at 20 degrees Celsius. The vapor pressure for 1-BP is higher than the vapor pressures for perchloroethylene (PERC; CAS No. 127–18–4) and trichloroethylene (TCE; CAS No. 79–01–6), two chemicals for which 1-BP has frequently been used as a substitute in recent years. This has led to concerns that air emissions associated with 1-BP use could be higher than those caused by similar use of other solvents with lower vapor pressures.

While 1-BP is predominantly used as a solvent cleaner/degreaser, it also has numerous other uses, as reported in literature and by manufacturers, distributors, and end users of 1-BP. These other uses include, but are not limited to, dry cleaning, adhesives and adhesive accelerant, mold release agent, solvent in aerosol spray applications, and as an intermediate chemical in the manufacture of organic and inorganic chemical manufacturing including pharmaceuticals and agricultural products.

C. What is the petition process for the addition of a substance to the HAP list?

Section 112(b)(3)(A) of the CAA specifies that any person may petition the Administrator to modify the HAP list contained in CAA section 112(b)(1) by adding or deleting a substance. CAA section 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list, otherwise known as the

HAP list, “upon a showing by the petitioner or on the Administrator’s own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.”

After a petition is submitted to the EPA to modify the HAP list, the EPA conducts a completeness determination and then a technical review of the petition. During the completeness determination, a broad review determines whether all necessary data requirements for the petition are addressed. In addition, the EPA determines whether adequate data, analyses, and evaluations are included to meet the petition requirements. The EPA may request additional information during this process. If a petition is determined to be complete, then the EPA places a notice of receipt of a complete petition in the **Federal Register**. That document announces a public comment period on the petition and starts the technical review phase. The technical review determines whether the petition has satisfied the necessary requirements and can support a decision to list or delist a HAP. All comments and data submitted during the public comment period are considered during the technical review.

D. What has happened to date on the listing of 1-BP?

The Halogenated Solvents Industry Alliance (HSIA) and New York State Department of Environmental Conservation (NYSDEC) submitted petitions to add 1-BP to the CAA section 112(b)(1) HAP list on October 28, 2010, and November 24, 2011, respectively. After requesting and receiving additional information from the petitioners, the EPA published a document in the **Federal Register** on February 6, 2015 (80 FR 6676), that the 1-BP petitions were complete and requested public comments for consideration during the technical review phase. Following our thorough review of the petitions, relevant scientific studies, and comments received, we concluded that 1-BP was reasonably anticipated to cause adverse effects to human health based on the evidence of the carcinogenicity and toxicity of 1-BP and that petitioners’ assessments of potential ambient concentrations of 1-BP likely to result at a facility’s fence line under normal operating conditions were reasonable. On January 9, 2017, the EPA issued a **Federal Register** document of its draft

rationale for granting petitions to add 1-BP to the HAP list (82 FR 2354).

On June 18, 2020, the EPA issued a final **Federal Register** document granting the petitions to add 1-BP to the CAA section 112(b) HAP list (85 FR 36851). This was the first occasion where the EPA has granted a petition to add a substance to the CAA section 112(b) HAP list that Congress created in 1990. By granting these petitions, the EPA is now obligated by CAA section 112(b)(3) to add 1-BP to the list of HAP. In section IV of the final document granting the petitions, the EPA explained that a second step to list 1-BP was warranted and would entail publishing a **Federal Register** document that would formally add 1-BP to the CAA section 112(b)(1) HAP list. 85 FR 36854. The EPA also explained that there would be a need to take further regulatory actions as a result of the listing decision. 85 FR 36854 and 36855.

On August 17, 2020, California Communities Against Toxics, Sierra Club and Gasp filed a petition for judicial review of the agency’s decision to grant petitions that did not list 1-BP as a HAP under CAA section 112(b)(1). *California Communities Against Toxics v. EPA*, Case No. 20–1311 (D.C. Circuit). The State of New York is an intervenor on behalf of petitioners. This case is currently being held in abeyance pending review by the new administration and motions to govern further proceedings are due on June 7, 2021.

E. What other actions has the EPA taken on 1-BP?

The EPA evaluated 1-BP under the amended Toxic Substances Control Act (TSCA) and completed the final risk evaluation in August 2020. The final risk evaluation identified unreasonable risks to workers, occupational non-users, consumers, and bystanders from 1-BP exposure. The EPA did not find unreasonable risks to the environment or the general population from the evaluated uses of this chemical. The next step in the process required by TSCA is addressing these risks through risk management in formal rulemaking. The EPA has begun the process of developing ways to address the unreasonable risks identified and has up to one year to propose and take public comments on any risk management actions. (See https://www.epa.gov/sites/production/files/2020-08/documents/risk_evaluation_for_1-bromopropane_n-propyl_bromide.pdf).

F. What is the purpose of this ANPRM?

The EPA has made the determination that 1-BP is an air pollutant that should

¹ A more detailed discussion of the potential health impacts can be found in the June 18, 2020 (85 FR 36851) document granting the petitions to add 1-BP to the HAP list or in the risk evaluation of 1-BP conducted under the Toxic Substances Control Act (TSCA) and detailed in an August 12, 2020, **Federal Register** document (85 FR 48687). See also <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-1-bromopropane-1-bp>.

be added to the HAP list and therefore expects to list 1-BP as required by CAA section 112(b)(3). Once added to the HAP list, 1-BP will become subject to regulation under CAA section 112. (EPA has a “clear statutory obligation to set emission standards for each listed HAP.” *National Lime Association* 233 F-3d 634). There is no specific period for promulgating standards for newly listed HAPs under CAA section 112(b)(1). As previously noted, CAA section 112(e)(1)(E) calls for EPA to promulgate MACT for all source categories on the CAA section 112(c)(1) source category list within ten years of listing or by November 15, 2000. EPA has promulgated standards for all currently listed source categories; however, some standards have been remanded to the Agency.

While the addition of a new HAP to the HAP list can be accomplished with a relatively simple revision to 40 CFR part 63, subpart C, the effective incorporation of this new HAP into an existing program is more complex. The NESHAP program under CAA section 112 is decades old and numerous regulations exist that could be impacted by the addition of a new HAP. In order to effectively regulate 1-BP when listed, the EPA needs additional information on the uses of 1-BP, and compliance issues, such as source categories that could be subject to immediate compliance with existing requirements. This information will enable the EPA to better ensure that the regulatory infrastructure is in place to clearly explain obligations that might arise immediately for some source categories without further action by the EPA as well as to establish any new regulations needed to effectively control the emissions of this new HAP.

This ANPRM solicits information to identify and evaluate the regulatory impacts, such as changes in the applicability of existing regulations or changes in how sources comply with existing requirements that would be expected to result from the upcoming action to add 1-BP to the HAP list. The EPA intends to review these regulatory compliance impacts that could potentially include impacts on numerous small businesses that may not even be aware of any new requirements and associated impacts and determine if further regulatory action is required to address them. Regulatory impacts will likely depend on several factors, including the amount of 1-BP used and the process involved (e.g., as a cleaning agent in a solvent cleaner versus as a spray gun cleaning solvent at an aerospace coating operation), and the

total amount of HAP emitted by a particular facility.

The EPA is not soliciting comments on the June 18, 2020 grant of petitions to list 1-BP as a HAP, including the technical bases for the grant, and therefore, has not reopened that decision for comments. EPA intends to treat any comments on the decision to grant petitions to list as beyond the scope of this action/proceeding. Further, the EPA currently plans to develop, propose, and promulgate revisions to the General Provisions of 40 CFR part 63 that will build the regulatory infrastructure to provide clarity regarding changes in the applicability of and compliance with existing NESHAP when a pollutant is added to the HAP list. The EPA will be developing the revisions to address the addition of both 1-BP and any subsequent HAP(s) under CAA section 112(b). The EPA also plans to consider whether additional revisions to other subparts regulating specific source categories are warranted to account for the inclusion of a new HAP. While current plans are to revise the General Provisions, the EPA may consider and propose alternative approaches for providing the regulatory infrastructure to ensure the effective regulation of 1-BP.

The EPA has determined that issuance of this ANPRM is the most efficient means for information collection such as on the types and sizes of sources of 1-BP, as well as to identify other issues for consideration, including whether additional source categories must be added to regulate 1-BP. The EPA expects that this document would allow for participation in the data gathering process by a large and diverse group of stakeholders that includes potentially impacted facilities, small businesses, and state, local, or tribal governments.

III. Future Impacts of Listing

A. Profile of 1-BP

1. Production, Usage, and Emissions Control

Having a complete profile of current 1-BP usage and emission control would assist in the EPA's analysis of the impact of listing 1-BP as a HAP to better inform development of regulations and public outreach. However, until recently, usage and emission records for 1-BP have been difficult to obtain due to the lack of publicly available data. In 2015, 1-BP was added to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990.

The addition of 1-BP to the EPCRA section 313 list of toxic chemicals (frequently referred to as the Toxics Release Inventory (TRI)) became effective beginning January 1, 2016, for TRI reporting year 2016 and beyond. For more information on TRI reporting criteria, see <https://www.epa.gov/toxics-release-inventory-tri-program/basics-tri-reporting>.

In its petition to add 1-BP to the HAP list, the HSIA estimated the annual global production of 1-BP in 2007 to be 20,000 to 30,000 metric tons and estimated the use of 1-BP as a solvent in the U.S. to be growing at a rate of 15 to 20 percent per year. During the petition process, Enviro Tech International (ETI) commented on the HSIA's estimates and presented its own data on the use of 1-BP in the U.S., such as in the precision cleaning industry sector, the dry cleaning industrial sector, and the adhesive, coatings, and inks sector. According to ETI, in the U.S., approximately 4,080 short tons (3,701 metric tons) of 1-BP were used within these three sectors in 2014. In 2015, the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) Chemical Data Reporting (CDR) database estimated U.S. production and imports of 1-BP to be 26 million pounds (11,793 metric tons). The EPA requests information on U.S. production, usage, and import projections for 1-BP.

2. Emissions Profile—Data Needs

In order to assess the impacts of adding 1-BP to the HAP list, the EPA needs additional information on the location and use of 1-BP. The EPA is requesting information on the usage of 1-BP in all industries to broaden our understanding of regulatory impacts that could arise subsequent to the addition of 1-BP to the HAP list. Specifically, we solicit comment and information on the following areas: (1) The types of applications or processes that employ 1-BP (e.g., chemical production, spray coating, solvent cleaner/degreaser); (2) the amount of 1-BP used in specific applications; (3) whether 1-BP is used in a separate process from other HAP or is used in combination with other HAP; (4) the types of facilities where 1-BP is used; (5) whether the facility using 1-BP is classified as a large or small business;²

² The Small Business Regulatory Enforcement Fairness Act (SBREFA), signed into law on March 29, 1996, is an amendment to the Regulatory Flexibility Act (RFA) of 1980 and adopts the Small Business Act's definition of “small entity” as defined in 5 U.S.C. 601, 15 U.S.C. 632, and Small Business Administration regulations. This includes small businesses (typically 500 or 750 employees

(6) any available information on the reasons for the selection of 1-BP (e.g., particular effectiveness, replacement for HAP); (7) whether the processes are controlled or uncontrolled for 1-BP or HAP emissions and, if controlled, what types of control devices or practices are utilized; and (8) any other information that the respondent believes is important to consider.

The EPA is also interested in information from facilities that are currently using and controlling the emissions of 1-BP. The EPA believes that the same controls used to control other volatile HAP would be equally effective in controlling 1-BP. The EPA is interested in whether industry agrees with this assertion or if data are available to refute this position. The EPA is also aware that the previous **Federal Register** documents discussing the petitions to add 1-BP to the HAP list may have caused many facilities to evaluate the potential to replace the use of 1-BP in their operations. The EPA is interested in examples from industry of the steps taken to evaluate alternatives for 1-BP and whether replacements were successfully completed. Please also provide information on any impediments to successful control or replacement of 1-BP.

The information will aid in identifying the specific 1-BP use scenarios across NESHAP source categories so that the Agency is able to fully consider and address the direct and immediate impacts of listing 1-BP in the upcoming action. The information will also assist the EPA in addressing possible applicability and compliance questions going forward, including questions or concerns raised about the potential impact on small businesses, children, tribes, and environmental justice communities. By minimizing uncertainty in compliance requirements, identifying any barriers to compliance, and ensuring that the EPA has a more complete inventory of emission sources, the EPA can better assure that the intended emission reductions required by the NESHAP are understood and that those emission reductions are expeditiously attained. However, data are required to support the analyses of impacts to these groups.

including all parent and subsidiary employees), small governmental jurisdictions (population of less than 50,000), and small organizations (e.g., not-for-profit organizations) that are not dominant in their field. The definition of a "small business" is determined by a business's North American Industry Classification System code and annual receipts or number of employees. <https://www.govinfo.gov/content/pkg/PLAW-104publ121/pdf/PLAW-104publ121.pdf>.

B. Possible Regulatory Impacts of Listing Action-Data Needs

Once added to the HAP list, 1-BP will become subject to regulation under CAA section 112 and as explained below, some sources' regulatory obligations may change at that point. In granting the petitions to list 1-BP, the EPA explained that a second step to the process was accordingly warranted that would entail publishing a **Federal Register** document adding 1-BP to the CAA section 112(b)(1) HAP list. 85 FR 36854. The EPA further explained its belief at that time that most source categories emitting 1-BP would not become subject to emissions standards addressing the compound until the EPA amends or promulgates new standards for specific source categories. Although the Agency still considers this to be the case for many of the source categories regulated under CAA section 112, the EPA has since determined that the requirements of certain NESHAP could apply immediately to facilities using 1-BP. As explained below, the requirements of these NESHAP apply broadly to all HAP, and the listing of 1-BP could affect the compliance obligations of sources subject to these requirements. In addition, for some sources, the addition of a new HAP could change the calculation of whether the source is a major source and the concomitant regulatory obligations. The EPA has determined that additional rulemaking is warranted to clarify or establish how quickly regulated sources impacted by the change in the HAP list must adapt to ensure compliance with existing regulations.

The following sections describe potential impacts that could occur once 1-BP is listed as a HAP. Some of these impacts could occur immediately with the listing of 1-BP, while other impacts may require additional EPA action to address compliance and implementation issues.

1. Potential Impacts on Major Source Facilities

The EPA reviewed applicability provisions for more than 40 current NESHAP to identify potential impacts from the listing of 1-BP as a HAP. The focus of the EPA review was on those NESHAP that regulate solvents used for cleaning or for applying adhesives or surface coatings, which are identified as the main uses of 1-BP. Most surface coating rules specify both numeric limits and work practice requirements to ensure the control of HAP used in these kinds of operations. Our preliminary findings indicate that for several NESHAP, the listing of 1-BP

could impact compliance requirements of the NESHAP without changes to existing rule language.

As an example, the numeric limits in coating rules are often based on a limitation on the amount of organic HAP per unit, which often results in facilities reducing the HAP content of their coatings in order to comply with the limits. In many instances, the term coating is defined to include adhesives and solvent cleaning used in the coating process or ancillary operations. The addition of 1-BP to the HAP list could immediately impact compliance calculations for many NESHAP for coating operations because these rules often define HAP by a direct reference to the HAP list published (and modified) under CAA section 112(b) and codified in 40 CFR part 63, subpart C. When 1-BP is listed as a HAP, in order to maintain compliance with the applicable limits, affected sources using 1-BP that are subject to numeric limits such as these would likely need to reassess compliance with the numeric emission limits in the source category rule. This may extend to facilities that purposely selected to use 1-BP as part of their compliance strategy because it was not a HAP at the time the facilities reformulated their coatings. Further, since the compliance dates for most NESHAP are long past, there may be some question as to the reasonable time allowance that would be appropriate for sources to include 1-BP in their compliance demonstrations. See section III.C below for our discussion on compliance timing as it relates to listing of 1-BP as a HAP.

The EPA requests comments and information on actual uses of 1-BP and detailed information on any experiences facilities have had in any evaluations of 1-BP and its potential control or replacement. The EPA is also interested in examples of issues that might need to be resolved in the future for sources to achieve compliance with existing standards. This may include the evaluation of existing air pollution control devices (APCDs) or the need for the addition of APCDs. A facility may also opt to consider elimination or reduction of 1-BP use in a covered emission unit. The EPA requests comments on whether there are additional factors that impact evaluations of compliance strategies to include 1-BP, such as whether the facility is already complying with the NESHAP for other HAP. The EPA is also interested in examples of where the addition of 1-BP to the HAP list will subject previously unregulated emissions units to a current NESHAP, as well as when the addition would impact

units already being controlled to meet a NESHAP.

Further, several source category rules also include work practice requirements that require the use of “low HAP” or “no HAP” products for either cleaning or adhesive activities. Typically, in such rules, “no HAP” is defined as containing less than 1 percent total HAP by weight. The EPA believes that there are instances where 1-BP is currently being used to meet these requirements. Once 1-BP is listed as a HAP, affected sources might need to employ alternatives to 1-BP to meet these low-HAP or no HAP requirements. The EPA requests comments on available alternatives for 1-BP and any impediments to the replacement of 1-BP, such as revisions to process specifications or other standard operating procedures.

Several NESHAP have requirements that apply to emission sources that are defined to be “in HAP service” or “using HAP based materials.” These requirements include work practices, such as covers on all storage containers and transport equipment, requirements for closed-loop systems, and in some cases leak detection and repair requirements. Further, some rules regulate halogen emissions from specific process units but define halogen to include only a subset of halogens (*e.g.*, chlorine and fluorine, or just fluorine). The EPA requests comments on specific examples of regulations with requirements such as these that could be impacted by the addition of 1-BP to the HAP list.

2. Potential Impacts on Area Source Facilities

Once listed, any facility using 1-BP that is currently an area source of HAP would need to determine its HAP potential to emit (PTE) based on calculations that include 1-BP. The facility would then need to evaluate whether its updated PTE would make the facility a major source as defined in CAA sections 112(a)(1) and (2) and 40 CFR 63.3. The EPA has information from TRI that suggests that several sources could become major HAP sources when considering their current 1-BP emissions.

An existing source that would begin operating as a major HAP source would need to evaluate the applicability of specific NESHAP that would now apply. This could include source categories that have requirements applicable to the 1-BP emission sources or could include general source categories, such as industrial boilers. For example, by becoming a major source, a facility could become subject

to both a surface coating NESHAP and the NESHAP for emergency generators. The facility would need to determine and implement their compliance strategy for each applicable NESHAP. If a facility does not already have a title V operating permit, they would need to apply for one consistent with the deadlines in applicable 40 CFR part 70 program rules. A facility that already has a title V operating permit, such as a facility that is already a major source for criteria pollutants, may need revisions to their existing operating permit to include major source NESHAP applicable requirements and/or any additional state implementation plan/state permitting requirements. The EPA solicits comments on the steps that a facility would need to take if the facility is transitioning from an area source to a major source of HAP due to the addition of 1-BP. The EPA asks for details on required facility actions for developing and implementing any new NESHAP compliance requirements, as well as any additional permitting required for the facility. The EPA is interested in whether the area-to-major facilities face additional burdens not faced by those facilities that are already major HAP sources, such as a need to install control equipment for compliance with NESHAP standards.

Area sources would also need to determine whether any of the NESHAP for area sources apply to their operations. For example, area sources that are subject to a NESHAP might be required to use a non-HAP product or comply with specific work practices. If the facility currently uses 1-BP to meet the non-HAP product requirements, the facility may need to either replace 1-BP with another non-HAP product or switch to the work practice alternatives in the rule. The EPA solicits examples of area source rules that may apply to area sources using 1-BP. In addition to the above requests, the EPA welcomes comments on other compliance issues or concerns that could arise from the inclusion of 1-BP on the HAP list.

C. Information Needed To Assist in Evaluating Compliance Timing and Potential New Source Categories

As previously explained, this is the first occasion on which the EPA is granting a petition to add a substance to the HAP list that Congress established in the 1990 CAA Amendments. As also previously explained, the addition of 1-BP to the HAP list will raise compliance questions such as the timing of incorporating a new HAP into ongoing compliance demonstration requirements for NESHAP that are already in effect. The EPA is requesting comments to

inform the decision on how to best incorporate a new HAP into compliance demonstrations.

The EPA requests comments on whether all sources subject to a NESHAP at the time of a new HAP listing need the same amount of time to review and update their obligations under a NESHAP and develop and implement a compliance strategy. Alternatively, the EPA could consider providing a different compliance timeline for sources that are already meeting the standard for other HAP at the time 1-BP is added as opposed to a facility that is newly subject to the specific NESHAP.

The EPA also requests comments on whether there are different considerations that should be taken into account for sources subject to standards for “existing sources” versus standards for “new sources.” This is because for emission standards, limitations, or regulations under CAA section 112, new sources are typically required under CAA 112(i)(1) to be in compliance “upon start up” or by the effective date of a promulgated rule. Existing sources, on the other hand, are allowed up to 3 years after the effective date of a promulgated rule to comply under CAA section 112(i)(3). When a pollutant is added to the HAP list, however, there could be established, operating sources already complying with the applicable requirements for either new affected sources or existing affected sources. The EPA is seeking information and data that will help the EPA to determine the appropriate compliance timeframe for these sources. Specifically, we request information and examples on whether affected sources subject to new or existing requirements could face different burdens to identify and implement a compliance strategy.

As stated previously, the EPA is considering whether changes to the General Provisions of 40 CFR part 63 would be the best approach to provide clarification or extension to compliance schedules for incorporating 1-BP into existing NESHAP. Under this approach, the EPA could modify 40 CFR 63.6 to provide a consistent compliance timeline for all sources impacted by the addition of any new HAP, rather than addressing only 1-BP. For example, the EPA could provide a 1-year compliance period for all facilities impacted by the addition of a new HAP. Alternatively, the EPA could provide a schedule that is based on the individual source category rule. For example, the General Provisions could be revised to require that compliance demonstration that includes a newly listed HAP must be provided in the first complete semi-

annual reporting period that follows the addition of a new HAP.

Instead of revising the General Provisions, the EPA may determine that individual evaluations of the time needed are warranted for each NESHAP with known or likely 1-BP use; the EPA could then make individual decisions for each NESHAP and incorporate the compliance timeline in each rule. The EPA requests comments on the relative benefits of a NESHAP case-by-case approach as opposed to a consistent timeline for all NESHAP. We request comments and information on any alternative schedules and factors that should be considered.

In its review, the EPA has identified several NESHAP that control total HAP or volatile HAP. As mentioned above, several of these NESHAP define HAP as all compounds in the CAA HAP list, while others regulate a subset of the HAP list. We request comments on whether the time to develop and implement control strategies for rules that immediately include 1-BP differ from those categories with a category-specific HAP list. The EPA requests comments on alternatives for incorporating 1-BP into rules with source category-specific HAP lists.

The EPA is also seeking information to support its determination as to whether the Agency should establish new source categories and what those source categories would be to ensure effective and appropriate regulation of 1-BP. As discussed in the EPA decision to grant the petition to list 1-BP, an example of a new source category could be one that would cover 1-BP emissions from dry cleaning operations. 85 FR 36854. The current NESHAP for Dry Cleaning Facilities (40 CFR part 63, subpart M) establishes requirements only for PERC. The EPA will need to evaluate whether this subpart, which includes regulation of both area and major sources of HAP, should be expanded to include dry cleaning sources using 1-BP or whether regulation would better be accomplished by listing a new source category and then establishing MACT (or GACT) for these 1-BP sources independent of 40 CFR part 63, subpart M. It is also possible that no new regulation of dry-cleaning operations will be necessary to address 1-BP. There have been numerous reports that the use of 1-BP in dry cleaning is being eliminated by the industry. The EPA requests information on whether there is any ongoing use of 1-BP in dry cleaning, as well as information on the size and types of dry-cleaning facilities that continue to rely on 1-BP as their cleaning solvent.

In addition to source category additions based on current NESHAP source categories, the EPA may also conclude, based on information provided through comment on this document and our own evaluation, that additional categories of major sources or area sources are warranted. The EPA requests comments and data on 1-BP uses that may not be included in any current NESHAP but that might warrant consideration for listing under CAA section 112(c).

IV. Additional Requests for Data and Comments

A. Additional Requests

In addition to the comments requested elsewhere in this document, the EPA is requesting any and all information that will enable Agency action as it relates to adding 1-BP to the HAP list as well as on the following specific areas:

1. The EPA is requesting comment and information to help assess the potential impact of the upcoming listing action on small businesses. This includes requesting information on the number of small businesses potentially impacted by this listing action; the source categories that contain these entities; any unique or disproportionate burden that these small businesses may face; and any suggestions for addressing the specific impacts on these sources.

2. The EPA requests comments and information on: The potential impact of this action on permitting requirements including ongoing preconstruction or renewal applications; any need to change state, local, or tribal programs to address this first-time listing of a new HAP; any potential changes to general permits that may be needed; and any other issues that the EPA should consider as the addition of 1-BP to the HAP list progresses. The EPA requests examples of ongoing permitting activities that could be impacted.

3. The EPA requests comments and data on any end- or intermediate-uses of 1-BP we have not addressed in this ANPRM. As previously noted, once 1-BP is listed as a HAP, it will potentially be regulated in all applications. Early identification of specific compliance issues will enable the EPA to more proactively address these issues.

4. The EPA has not yet determined whether any of the potential actions associated with addressing the impacts of the listing of 1-BP will have a significant impact on a substantial number of small entities, which would require that we conduct a formal Small Business Advocacy Review panel under SBREFA. We request comments and

information on impacts that should be included in our evaluations from the concurrent regulatory requirements that occur with the upcoming listing of 1-BP. The EPA is also requesting suggestions for additional outreach opportunities to ensure that small businesses are aware of the upcoming listing action and its potential impact on their operations.

5. The EPA is requesting comments on whether there are any additional impacts or factors, including health outcomes and susceptible subpopulations, that should be considered as they relate to any disproportionate impact on children, tribes, and environmental justice communities.

6. In order to better assess the cost and economic impacts of the upcoming listing action, the EPA is soliciting comments on all compliance-related costs created by the addition of 1-BP to the HAP list. Compliance costs could include engineering controls, costs to meet work practice requirements, as well as testing, recordkeeping, and reporting costs of complying with current NESHAP.

7. As noted above, there is another ongoing EPA regulatory effort for 1-BP being conducted by the EPA under TSCA. We are aware that those actions have the potential to impact some of the same facilities, potentially including the same small businesses, as will be affected by the addition of 1-BP to the CAA HAP list. The EPA requests comments on additional measures that might be considered to ensure that the impacts from these two distinct programs (TSCA and CAA) are understood by the regulated community and to ensure that unnecessary compliance burden is mitigated to the extent possible.

B. Types of Data and Comment Not Requested at This Time

While the EPA is seeking comment and information on all aspects of the impact of the addition of 1-BP to the HAP list, as discussed elsewhere in this document, the EPA is not seeking comments on the justification for the listing as the decision to grant the petition to list 1-BP has been made. Those issues were fully considered and addressed in the technical review that the Agency conducted for purposes of granting the petitions to add 1-BP to the HAP list. 82 FR 2354, 2358 through 62. Therefore, comments on the justification for listing would be considered as beyond the scope of this action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, titled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is a “significant regulatory action.” Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. When the EPA develops the rulemaking, the EPA will address the applicable statutes and Executive Orders.

Michael S. Regan,
Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA-2021-0073; FRL-10021-64-Region 6]

Arkansas: Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Arkansas Division of Environmental Quality (DEQ) has applied to the Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Arkansas’ application and has determined that these changes appear to satisfy all requirements needed to qualify for final authorization and is proposing to authorize the State’s changes. The EPA is seeking public comment prior to taking final action.

DATES: Comments on this proposed rule must be received by July 12, 2021.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Email:* patterson.alima@epa.gov. *Instructions:* EPA must receive your comments by July 12, 2021. Direct your comments to Docket ID Number EPA-R06-RCRA-2021-0073. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal [regulations.gov](https://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [regulations.gov](https://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any CD you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

You can view and copy Arkansas’s application and associated publicly available docket materials either through www.regulations.gov at the following locations: Division of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas, 72118 telephone: (501) 682-0744 and EPA, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. The EPA facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Alima Patterson, Regional Authorization/

Codification Coordinator at (214) 665-8533, before visiting the Region 6 office. Interested persons wanting to examine these documents should make an appointment with the office.

FOR FURTHER INFORMATION CONTACT:

Alima Patterson, (214) 665-8533, patterson.alima@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA’s regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have EPA made in this rule?

On March 2, 2021, the State of Arkansas submitted a final complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2014 and June 30, 2018, which includes RCRA Clusters XXIV through and RCRA Cluster XXVI (Checklists 233A, 233B, 233C, 233D2, 233E, 234, 235, 236, 237, 238 and 239). The EPA has reviewed Arkansas’ application to revise its authorized program and is proposing to find that it meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant the State of Arkansas final authorization to operate its hazardous waste program with the changes described in the authorization application.

The State of Arkansas will continue to have responsibility for permitting

treatment, storage and disposal facilities (TSDFs) within its borders (except in Indian Country), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in the State of Arkansas, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this proposed authorization decision?

If the State of Arkansas is authorized for these changes, a facility in Arkansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Additionally, such facilities will have to comply with any applicable Federal requirements such as, for example, HSWA regulations issued by the EPA for which the State has not received authorization. The State of Arkansas will continue to have enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013 and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- enforce RCRA requirements and suspend or revoke permits, and
- take enforcement actions after notice to and consultation with the State.

The action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which the State of Arkansas is requesting authorization are already effective under State law and are not changed by the act of authorization.

D. What happens if the EPA receives comments on this action?

If the EPA receives comments on this proposed action, we will address those comments in our final action. You may not have another opportunity to comment. If you wish to comment on this proposed authorization, you must do so at this time.

E. What has Arkansas previously been authorized?

Arkansas initially received final authorization on January 11, 1985, effective January 25, 1985 (50 FR 1513), to implement its Base Hazardous Waste Management program. We granted authorization for changes to their program on August 23, 1985, via EPA letter, effective August 23, 1985; March 27, 1990 (55 FR 11192), effective May 29, 1990; September 18, 1991 (56 FR 47153), effective November 18, 1991; October 5, 1992 (57 FR 45721), effective December 4, 1992; October 12, 1993 (58 FR 52674), effective December 13, 1993; October 7, 1994 (59 FR 51115), effective December 21, 1994; June 20, 1995 (60 FR 32112), effective August 21, 1995; April 24, 2002 (67 FR 20038), effective June 24, 2002, as amended June 28, 2010 (75 FR 36538); August 15, 2007 (72 FR 45663), effective October 15, 2007, as amended June 28, 2010 (75 FR 36538); June 28, 2010 (75 FR 36538), effective August 27, 2010; August 10, 2012 (77 FR 47779), effective October 9, 2012; October 2, 2014 (79 FR 59438), effective December 1, 2014; October 31, 2014 (79 FR 64678), effective December 30, 2014; January 29, 2016 (81 FR 4961), effective March 29, 2016; August 11, 2016 (81 FR 53025), effective October 11, 2016; and September 14, 2017 (82 FR 43185), effective November 13, 2017.

The authorized Arkansas RCRA program was incorporated by reference into the Code of Federal Regulations October 12, 1993 (58 FR 52674) effective December 13, 1993; June 20, 1995 (60 FR 32112) effective August 21, 1995; June 28, 2010 (75 FR 36538) effective August 27, 2010; October 2, 2014 (79 FR 59438) effective December 1, 2014; January 29, 2016 (81 FR 4961) effective March 29, 2016; August 11, 2016 (81 FR 53025) effective October 11, 2016; and September 14, 2017 (82 FR 43185), effective November 13, 2017.

On March 2, 2021, Arkansas submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21. The State of Arkansas has undergone a state agency reorganization that has placed the Arkansas Department of Environmental Quality in the Arkansas Department of Energy and Environment and is now the Arkansas Division of Environmental Quality (DEQ). The Arkansas Division of Environmental Quality is now the agency responsible for administering all solid and hazardous waste regulations for the State of Arkansas. The Arkansas Pollution Control and Ecology Commission (APC&EC) is vested with

general authority to make and amend rules in Ark. Code Ann. § 8–01–203(b)(1)(A), and is vested with specific authority to make and amend rules with regard to hazardous waste management in Ark. Code Ann. § 8–7–209(b)(1).

On May 28, 2020, the APC&EC passed Minute Order No. 20–14 to initiate Rulemaking for amendments to Regulation 23, Hazardous Waste Management in order to adopt Federal regulations promulgated between through May 30, 2018. On June 6 and 7, 2020, the notice of the proposed regulation changes, public hearing, and public comment period was published in the Arkansas Democrat-Gazette. On July 20, 2020, at 2:00 p.m., the APC&EC held a public hearing regarding the proposed changes at 5301 Northshore Drive, North Little Rock, AR 72118. No public comments were received during the public hearing. The public comment period expired on August 3, 2020, and no public comments were received during the public comment period. The amendments to Regulation 23 further incorporated changes mandated by Act of March 5, 2019, No. 315 to change all references of “Regulation” to “Rule,” and changes in terminology to conform to the Transformation and Efficiencies Act of 2019, No. 910, as well as a variety of non-substantive and minor stylistic changes in the interest of clarity and consistency. The Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8–7–201 *et seq.*, and the Arkansas Resource Reclamation Act of 1979, Ark. Code Ann. § 8–7–301 *et seq.* establish the statutory authority to administer the Hazardous waste management program under RCRA Subtitle C. The official State regulations may be found in Arkansas Pollution Control and Ecology Commission Rule No. 23 (Hazardous Waste Management), approved on August 27, 2020. The DEQ has the rules necessary to implement EPA’s portion of RCRA Clusters XXIV through RCRA Cluster XXVI. The provisions for which the State is seeking authorization are documented on Revision Checklists 233A, 233B, 233C, 233D2, 233E, 234, 235, 236, 237 238 and 239, which are portions of RCRA Clusters XXIV through RCRA Cluster XXVI. Any differences between the State’s provisions and the Federal provisions are noted on the individual Revision Checklists and the Program Description submitted by the State to EPA as part of its program revision application package.

F. What changes is EPA proposing to authorize with this action?

On March 2, 2021, the State of Arkansas submitted a final complete

program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We have determined that the DEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. We are now proposing to authorize, subject to receipt of written comments that oppose this action that the State of Arkansas hazardous waste program revisions are equivalent to, consistent with, and no less stringent

than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. The DEQ revisions consist of regulations which specifically govern Federal hazardous waste revisions promulgated between July 1, 2014 and June 30, 2018 (RCRA Clusters XXIV through RCRA Cluster XXVI). The Arkansas provisions are from the Arkansas Pollution Control and Ecology Commission (APC&EC) Rule No. 23, Hazardous Waste Management, as approved on August 27,

2020. In the State's adoption of the Federal provisions addressed by Checklist 233B, Arkansas incorrectly removed and reserved Rule 23 section 261.2(a)(2)(ii) (analogous to 40 CFR 261.2(a)(2)(i)(B)). EPA has notified Arkansas and the State will correct the error in their next rulemaking. We propose to grant Arkansas final authorization for the program changes in the Table within this document.

Description of Federal requirement (include Checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
RCRA Cluster XXIV		
1. Revisions to the Definition of Solid Waste Changes affecting non-waste determinations and variances (Checklist 233A).	80 FR 1694, January 13, 2015, as amended on May 30, 2018, 83 FR 24664.	APC&EC Rule No. 23, Sections 260.31(c) introductory paragraph, 260.31(c)(1)–(5), 260.33(c)–(e), 260.42 introductory paragraph, 260.42(a)(1)–(10), 260.42(b).
2. Revisions to the Definition of Solid Waste—Legitimacy-related provisions. (Checklist 233B).	80 FR 1694, January 13, 2015, as amended on May 30, 2018, 83 FR 24664.	APC&EC Rule No. 23, Sections 260.10 “contained”, 260.10 “Hazardous secondary material”, 260.43(a) introductory paragraph, 260.43(a)(1)–(4), 260.43(b) introductory paragraph, 260.43(b)(1)–(2), 260.43(c), 261.2(b)(3)–(4), 261.2(g).
3. Revisions to the Definition of Solid Waste—Speculative Accumulation (Checklist 233C).	80 FR 1694–1814, January 13, 2015.	APC&EC Rule No. 23, Sections 261.1(c)(8).
4. Revisions to the Definition of Solid Waste—Exclusions and non-waste determinations. (Checklist 233D2).	80 FR 1694, January 13, 2015, as amended on May 30, 2018, 83 FR 24664.	APC&EC Rule No. 23, Sections 260.10 “Facility”, 260.10 “Hazardous secondary material generator”, 260.10 “Intermediate facility”, 260.10 “Land-based unit”, 260.10 “Transfer facility”, 260.30 introductory paragraph, 260.30(b)–(e), 260.30(f) removed, 260.34(a)–(c), 261.1(c)(4), 261.2(c)(3), 261.2(c)(4) Table 1, 261.4(a)(23) introductory paragraph, 261.4(a)(23)(a)(i)(A)–(C), 261.4(a)(23)(ii)(A)–(F), 261.4(a)(24) introductory paragraph, 261.4(a)(24)(i)–(v)(C)(2), 261.4(a)(24)(v)(C)(3), 261.4(a)(24)(v)(D)–(vii), 261.4(a)(25) introductory paragraph, 261.4(a)(25)(i)–(xii), 261 Subsection H, 261 Subsections K–L [Reserved], 261 Subsection M, 270.42 Appendix I, Items A(9) and A(10). <i>Note: Section 261.4(a)(24)(v)(C)(3) is more stringent.</i>
5. Revisions to the Definition of Solid Waste—Remanufacturing exclusion (Checklist 233E).	80 FR 1694, January 13, 2015	APC&EC Rule No. 23, Sections 260.10 “Remanufacturing”, 261.2(c)(3), 261.2(c)(4) Table 1, 261.4(a)(27) introductory paragraph, 261.4(a)(27)(i)–(vi)(F), 261 Subsections I, J, AA, BB, CC.
6. Response to Vacatur of the Comparable Fuels Rule and the Gasification Rule (Checklist 234).	80 FR 18777, April 8, 2015	APC&EC Rule No. 23, Sections 260.10 “Gasification” [Removed], 261.4(a)(12)(i), 261.4(a)(16) [Reserved], 261.38 [Reserved].
7. Disposal of Coal Combustion Residuals from Electric Utilities (Checklist 235).	80 FR 21302, April 17, 2015	APC&EC Rule No. 23, Sections 261.4(b)(4)(i)–(ii)(H).
RCRA Cluster XXV		
8. Import and Exports of Hazardous Waste (Checklist 236).	81 FR 85696, November 28, 2016. 82 FR 41015, August 29, 2017	APC&EC Rule No. 23, Sections 260.10 “AES filing compliance date”, 260.10 “Electronic import-export reporting compliance date”, 260.10 “Recognized trader”, 260.11(g) introductory paragraph, 260.11(g)(1), 260.11(g)(2) [Reserved], 261.4(d)(1), 261.4(d)(4), 261.4(e)(1), 261.4(e)(4), 261.6(a)(3)(i) and 261.6(a)(5), 261.39(a)(5)(ii), 261.39(a)(5)(v) introductory paragraph, 261.39(a)(5)(v)(A)–(B)(2)(vii), 261.39(a)(5)(vi), 261.39(a)(5)(ix), 261.39(a)(5)(xi) ¹ , 262.10(d), 262.12(d), 262.41(j), 262 Subsections E and F [Reserved], 262 Subsection H ¹ , Appendix to Section 262 (removed by the final rule addressed by Checklist 237), 263.10(d), 263.20(a)(2), 263.20(c), 263.20(e)(2), 263.20(f)(2) and Note; 263.20(g) introductory paragraph, 263.20(g)(1)–(4)(ii), 264.12(a) introductory paragraph, 264.12(a)(1)–(a)(4)(ii), 264.71(a)(3) introductory paragraph, 264.71(a)(3)(i)–(ii), 264.71(d), 265.12(a) introductory paragraph, 265.12(a)(1)–(a)(4)(ii), 265.71(a)(3) introductory paragraph, 265.71(a)(3)(i)–(ii), 265.71(d), 266.70(b) introductory paragraph, 266.70(b)(1)–(3), 266.80(a) Table, 267.71(a)(4)–(a)(6)(ii), 267.71(d), 273.20, 273.39(a)–(b), 273.40, 273.56, 273.62(a), 273.70 introductory paragraph, 273.70(a)–(c).

Description of Federal requirement (include Checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
9. Hazardous Waste Generator Improvements Rule (Checklist 237).	81 FR 86732, November 28, 2016.	APC&EC Rule No. 23, Sections 260.10 "Acute hazardous waste", 260.10 "Central accumulation area", 260.10 "Large quantity generator", 260.10 "Non-acute hazardous waste", 260.10 "Performance Track member facility" [Removed], 260.10 "Small quantity generator", 260.10 "Very small quantity generator", 260.11(d)(1), 261.1(a)(1), 261.1(c)(6), 261.4(a)(7), 261.5 [Reserved], 261.6(c)(2)(iv), 261.33(e) introductory paragraph, 261.33(f) introductory paragraph, 261.420(g), 262.1 introductory paragraph, 262.1 "Condition for exemption", 262.1 "Independent requirement", 262.10(a) introductory paragraph, 262.10(a)(1)–(3), 262.10(b), 262.10(d), 262.10(g)(1)–(2), 262.10(j) [Reserved], 262.10(l) introductory paragraph, 262.10(l)(1)–(2), 262.11 introductory paragraph, 262.11(a)–(g), 262.12 [Reserved], 262.13 through 262.18(b), 262.18(c), 262.18(d)–(e), 262.19(b)–(d), 262.32(b) introductory paragraph, 262.32(b)(1)–(5), 262.32(c)–(d), 262.34 [Reserved], 262.35, 262.40(c), 262.41 introductory paragraph, 262.41(j), 262.43, 262.44 [Reserved], Subsections I and J [Reserved], 262.200 "Central accumulation area" [Removed], 262.200 "Trained professional", 262.201(a)–(b), 262.202(a)–(b), 262.203(a)–(b)(2), 262.204(a), 262.206(b)(3)(iii), 262.207(d)(2), 262.208(a)(1)–(2), 262.208(d)(2) introductory paragraph, 262.208(d)(2)(i)–(ii), 262.209(b), 262.210(a), 262.210(b)(3), 262.210(d)(2), 262.211(c), 262.211(d), 262.211(e)(3), 262.212(d), 262.213(a)(1)–(3), 262.213(b)(2), 262.214(b)(5), 262.216(a)–(b), 262 Subsection L, 262 Subsection M, 263.12(a)–(b)(2), 264.1(g)(1), 264.1(g)(3), 264.15(b)(4), 264.15(b)(4) Comment [Removed], 264.71(c), 264.71(c) Comment [Removed], 264.75, 264.170, 264.170 Comment, 264.174, 264.191(a), 264.195(e) [Reserved], 264.1030(b)(2), 264.1050(b)(3), 264.1101(c)(4), 265.1(c)(5), 265.1(c)(7), 265.15(b)(4), 265.15(b)(5) [Reserved], 265.71(c), 265.71(c) Comment [Removed], 265.75, 265.174, 265.174 Comment [Removed], 265.195(d) [Reserved], 265.201 [Reserved], 265.1030(b)(2), 265.1030(b)(3), 265.1050, 265.1101(c)(4), 266.80(a), 266.255(a), 267.71(c), 268.1(e)(1), 268.7(a)(5), 268.50(a)(1), 268.50(a)(i) introductory paragraph, 268.50(a)(2)(i)(A)–(D), 270.1(a)(3), 270.1(c)(2) introductory paragraph, 270.1(c)(2)(i)–(ii), 270.42(l) [Reserved], Item O.1 of 270.42 Appendix I [Reserved], 273.8(a)(2), 273.81(b), 279.10(b)(3). <i>Note: The following provisions are more stringent: 261.6(c)(2)(iv), 262.18(c), 262.19(b)–(d), 262.41 introductory paragraph, 264.75, 264.191(a) and 265.75.</i>
RCRA Cluster XXVI		
10. Confidentiality Determinations for Hazardous Waste Export and Import Document. (Checklist 238).	83 FR 60894, December 26, 2017.	APC&EC Rule No. 23, Sections 260.2(b), 260.2(d)(1)–(2), 261.39(a)(5)(iv), 262.83(b)(5), 262.83(f)(9), 262.84(b)(4), 262.84(f)(8).
11. Hazardous Waste Electronic Manifest User Fee Rule. (Checklist 239).	83 FR 420, January 3, 2018	APC&EC Rule No. 23, Sections 260.4, 260.5, 262.20(a)(1)–(2), 262.21(f)(5)–(8), 262.24(c) introductory paragraph, 262.24(c)(1)–(2), 262.24(e), 262.24(g) [Reserved], 262.24(h), 262 Appendix [Reserved], 263.20(a)(9), 263.21(a) introductory paragraph, 263.21(a)(1)–(4), 263.21(b)(1)–(4), 263.21(c) introductory paragraph, 263.21(c)(1)–(2), 264.71(a)(2) introductory paragraph, 264.71(a)(2)(i)–(vi), 264.71(k) introductory paragraph, 264.71(k)(1)–(2), 264.71(m) introductory paragraph, 264.71(m)(1), 264.71(m)(2) introductory paragraph, 264.71(m)(2)(i)–(iii), 264.71(m)(3), 264.71(m)(3)(i)–(ii), 264.71(m)(4)–(5), 264.1086(c)(4)(i), 264.1086(d)(4)(i), 265.71(a)(2) introductory paragraph, 265.71(a)(2)(i)–(vi), 265.71(k) introductory paragraph, 265.71(k)(1)–(2), 265.71(m) introductory paragraph, 265.71(m)(1), 265.71(m)(2) introductory paragraph, 265.71(m)(2)(i)–(iii), 265.71(m)(3), 265.71(m)(3)(i)–(ii), 265.71(m)(4)–(5), 265.1087(c)(4)(i), 265.1087(d)(4)(i).

G. Where are the revised State rules different from the Federal rules?

1. Evaluation and Analysis on When State Regulations Are More Stringent or Broader in Scope Than the Federal Regulations

Under 40 CFR 271.1(i), EPA allows states to (1) adopt and enforce

¹ Arkansas has not adopted the revisions to 40 CFR 261.39(a)(5)(xi) and 262.82(e)(1) and 262.82(e)(2) which were published on August 6, 2018 (83 FR 38262). EPA made conforming changes to the EPA office and address to which paper documents concerning imports and exports of hazardous waste and conditionally excluded cathode ray tubes must be sent. The change in address was needed to reflect the reorganization of hazardous waste import-export functions on April 29, 2018, from the Office of Federal Activities' International Compliance Assurance Division, in EPA's Office of Enforcement and Compliance Assurance, to the International Branch within the Office of Resource Conservation and Recovery's Materials Recovery and Waste Management Division, in EPA's Office of Land and Emergency Management. Because of the Federal government's

requirements which are more stringent or more extensive than those required by the federal RCRA program, and (2) operate a program with a greater scope of coverage than that required by the federal program. To determine whether particular state provisions are more stringent or broader in scope, EPA uses the December 23, 2014, guidance document: "Determining Whether State Hazardous Waste Requirements are More Stringent (MS) or Broader in Scope (BIS) than the Federal RCRA Program." ² In the guidance document, EPA uses a two-part test to determine if state regulations are MS or BIS. The

special role in matters of foreign policy, EPA cannot authorize States for import/export functions. However, EPA encourages States to incorporate these requirements into their regulations for the convenience of the regulated community and for completeness.

² A copy of this guidance is included in the docket of this proposed rule.

two-part test requires that the following questions be answered sequentially:

a. Does imposition of the particular state requirement increase the size of the regulated community or universe of wastes beyond what is covered by the federal program through either directly enforceable requirements or certain conditions for exclusion?

b. Does the particular requirement under review have a counterpart in the federal regulatory program?

If the answer to the first part of the test is yes, then the state requirement is generally considered broader in scope. If the answer is no, then EPA uses the second part of the test to determine whether the state requirement is more stringent or broader in scope. If the state requirement has a counterpart in the federal program, the state requirement is classified as more stringent. However, if the state requirement does not have a

counterpart, it is classified as broader in scope.

State provisions that are broader in scope are not part of the federally authorized program and thus, are not federally enforceable.

2. Arkansas Requirements That Are Broader in Scope Than the Federal Program

DEQ has adopted the Revisions to the Definition of Solid Waste (DSW) Rule published on January 13, 2015 (80 FR 1694), as amended by the DSW final rule published on May 30, 2018 (83 FR 24664) (2018 DSW rule). However, Arkansas has retained certain provisions from the federal 2015 DSW provisions that were vacated by the Court of Appeals for the District of Columbia Circuit, *Am. Petroleum Inst. v. EPA*, 862 F.3d 50 (D.C. Cir. 2017) and *Am. Petroleum Inst. v. EPA*, 883F.3d 918 (D.C. Cir. 2018), and which have been removed from the federal regulations by the 2018 DSW Rule. The Court vacated certain aspects of the 2015 federal DSW rule and replaced them with provisions from the 2008 DSW rule, see 73 FR 64668 (October 30, 2008). Specifically, the Court (1) vacated the federal 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions) (40 CFR 261.4(a)(24)) and the associated provisions at 40 CFR 260.30(f) and 260.31(d); (2) reinstated the transfer-based exclusion at 261.4(a)(24) and (25) from the 2008 rule to replace the now vacated 2015 verified recycler exclusion; (3) vacated Factor 4 of the 2015 definition of legitimate recycling in its entirety (40 CFR 260.43(a)(4)); and (4) at 40 CFR 260.43(b), reinstated the 2008 version of Factor 4 at 40 CFR 260.43(c)(2) to replace the now-vacated 2015 version of Factor 4.

In the State's adoption of the 2018 DSW rule, Arkansas has (1) retained the 2015 verified recycler exclusion by adopting an analog to 40 CFR 260.31(d), which addresses a variance from classifying as a solid waste those secondary materials that are transferred for reclamation under 40 CFR 261.4(a)(24); (2) replaced the federal reference to "any person" in the introductory paragraph of 40 CFR 261.4(a)(24) with "verified reclamation facility"; and (3) adopted the vacated Factor 4 of the 2015 definition of legitimate recycling (260.43(a)(4)), as well as the 2015 DSW provision at 261.4(a)(23)(ii)(E) which requires that documentation of the legitimacy determination must be a written description of how the recycling meets all four factors in § 260.43(a).

In order to determine whether the State of Arkansas regulations are more stringent or broader in scope than the federal RCRA program, EPA used the two-part test described in Section G.1. With respect to the first test, Arkansas regulates the same size of the regulated community and the same universe of hazardous secondary materials as the federal RCRA program. With respect to the second test, EPA has determined that the following State of Arkansas provisions from the 2015 federal DSW rule are broader in scope: (1) APC&CE Rule No. 23 sections 260.31(d) and the introductory paragraph of 261.4(a)(24) with respect to the verified recycler exclusion and (2) APC&CE Rule No. 23 section 260.43(a)(4) and the reference to the four factors at section 261.4(a)(23)(ii)(E) with respect to Factor 4 definition of legitimate recycling.

Due to the vacatur of certain 2015 federal DSW provisions and the reinstatement of 2008 federal DSW provisions, EPA's regulations do not include the provisions that were vacated by the Court.³ Arkansas has adopted selected vacated provisions, including the vacated 2015 DSW Factor 4 in the definition of legitimate recycling of hazardous secondary material and the verified recycler exclusion.⁴ As a result of the federal vacatur, the Arkansas provisions at Rule No. 23 sections 260.31(d), 260.43(a)(4), the reference to "four factors" in 261.4(a)(23)(ii)(E) and the reference to "verified reclamation facility" in the introductory paragraph of 261.4(a)(24) have no direct analogs in the federal regulations. EPA's December 23, 2014, guidance supports this conclusion. On page 6 of our December guidance, EPA provides that, ". . . if a state adopts a federal solid or hazardous waste exclusion, but adds additional conditions that must be met for the state exclusion to apply, those additional conditions would be considered outside the scope of the federal program and would not be part of the federally authorized program, although the entity would still be subject to federal enforcement regarding the part of the state regulations which track the federal conditions." Arkansas' program effectively contains additional conditions that must be met for the exclusion to apply. This makes the State's additional provisions broader in scope and not part of the federally

authorized program, see 40 CFR part 271.1(i)(2).

The DEQ provisions that are broader in scope than the federal regulations are not part of the program being proposed to be authorized by this proposed action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by DEQ law. For the purposes of RCRA section 3009, the Agency has determined that the broader in scope provisions are more protective/stricter, thus being within the State's authority to maintain them as part of the State's RCRA program. We make this determination due to the fact that the broader in scope provisions in DEQ's verified recycler exclusion require additional conditions to be met in order to qualify for the exclusion when compared to the reinstated transfer-based exclusion found in 83 FR 24664 (May 30, 2018).

3. Arkansas Requirements That Are More Stringent Than the Federal Program

The Arkansas hazardous waste program that is proposed for authorization contains several provisions which are more stringent than the Federal RCRA program. The more stringent provisions will be recognized as a part of the Federally-authorized program and will be Federally enforceable. The specific more stringent provisions are noted in the chart above and in the State's authorization application, and include the following:

1. Arkansas' Rule No. 23 section 261.4(a)(24)(v)(C)(3) requires the generator's certification statement to include the type and quantity of hazardous secondary material in a shipment. The Federal rules do not require this information to be included in the generator's certification statement.

2. Arkansas is more stringent because the State requires annual reporting rather than Federal biennial reporting at the following citations:

a. Rule No. 23 section 261.6(c)(2)(iv) requires owners and operators of facilities that recycle materials without storing them before they are recycled to meet the annual reporting requirements at Rule No. 23 section 265.75, rather than the federal biennial reporting requirement at 40 CFR 265.75.

b. The introductory paragraph of Rule No. 23 section 262.41 requires that generators submit annual rather than biennial reports.

c. Rule No. 23 sections 264.75 and 265.75 require that an owner or operator of treatment, storage or disposal facility

³ EPA issued a final rule referred to as the Transfer Base Exclusion reflecting the Court's ruling, see 83 FR 24664 (May 30, 2018).

⁴ The **Federal Register** citation for the "2015 DSW rule" is 80 FR 1694, January 13, 2015, and for the "2008 DSW rule" is 73 FR 64668, October 30, 2008.

must submit annual rather than biennial reports.

3. Rule No. 23 section 264.191(a) restricts those engineers who can inspect or certify a tank system's integrity to those registered in Arkansas, and independent from the facility owner/operator. The Federal requirements allow registration in any State.

4. Rule No. 23 section 262.19(b)–(d) subject very small quantity generators to additional requirements not found in the Federal regulations. The additional requirements include the following:

a. Very small quantity generators must manifest hazardous waste in accordance with Rule 23, Section 262 Subsection B (Manifest Requirements Applicable to Small and Large Quantity Generators).

(b) Very small quantity generators must keep hazardous waste containers closed except when adding or removing waste.

(c) Very small quantity generators must keep hazardous waste containers in good condition. If a hazardous waste container is not in good condition, or if it begins to leak, the very small quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with this requirement.

4. Arkansas Requirements That Are Broader in Scope Than the Federal Program

In Rule 23, section 262.19(a) of the hazardous waste program that is proposed for authorization, Arkansas requires all generators to use a transporter that is permitted by the Arkansas Department of Transportation for the transportation of hazardous waste. The Arkansas provision is broader in scope because the Federal program does include transporter permits. EPA cannot enforce State requirements that are broader in scope, although compliance with such provisions is required by DEQ law.

H. Who handles permits after the authorization takes effect?

The State of Arkansas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will not issue any more new permits or new portions of permits for the provisions listed in Table 1 in this document after the effective date of this authorization. The EPA will continue to implement

and issue permits for HSWA requirements for which Arkansas is not yet authorized.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Arkansas?

Arkansas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

J. What is codification and is the EPA codifying Arkansas' hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart E for this authorization of Arkansas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

K. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State Authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action proposes to authorize State requirements for the purpose of RCRA 3006, and imposes no additional requirements beyond those imposed by State law. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposed to authorize preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64

FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application; to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) 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.

Because this rule proposed to authorize pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Parts 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 4, 2021.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2021-12238 Filed 6-10-21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721 and 725

[EPA-HQ-OPPT-2020-0588; FRL-10022-56]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances (21-1.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs) and a Microbial Commercial Activity Notice (MCAN), and are also subject to Orders issued by EPA pursuant to TSCA. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the

significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: Comments must be received on or before July 12, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0588, through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-4163; email address: wysong.william@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers

are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA, which would include the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20 or 40 CFR 725.920 (for the microorganism), any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after July 12, 2021 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Background

A. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) for chemical substances that were the subject of PMNs and an MCAN. These proposed SNURs would require persons to notify EPA at least 90 days before commencing the manufacture or processing of any of these chemical substances for an activity proposed as a significant new use. Receipt of such notices would allow EPA to assess risks and, if appropriate, to regulate the significant new use before it may occur.

The docket for these proposed SNURs, identified as docket ID number EPA-HQ-OPPT-2020-0588, includes information considered by the Agency in developing these proposed SNURs.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A and (for microorganisms) 40 CFR part 725, subpart L. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). These requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN and before the manufacture or processing for the significant new use can commence, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human

beings or the environment to a chemical substance.

- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four TSCA section 5(a)(2) factors listed in this unit.

The proposed rules include PMN and MCAN substances that are subject to Orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). The TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The proposed SNURs identify significant new uses as any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL), and includes requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA Order for the same chemical substance.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for certain chemical substances in 40 CFR part 721, subpart E and in 40 CFR part 725, subpart M (for the microorganism). In this unit, EPA provides the following information for each chemical substance that is identified in this unit as subject to this proposed rule:

- PMN or MCAN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Effective date of and basis for the TSCA Order.
- Potentially Useful Information.
- CFR citation assigned in the regulatory text section of the proposed rule.

The chemicals subject to these proposed SNURs are as follows:

PMN Number: P-16-167

Chemical Name: Hindered amine alkyl ester compounds (generic).

CAS Number: Not available.

Effective Date of TSCA Order: April 24, 2020.

Basis for TSCA Order: The PMN states that the use will be as a light stabilizer for plastic articles. Based on submitted test data, EPA has identified concerns for dermal irritation and sensitization. Based on comparison to analogous aliphatic amines, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an Assigned Protection Factor (APF) of at least 50 where there is a potential for inhalation exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
- No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of chronic aquatic toxicity and reproduction/developmental toxicity screening testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11571.

PMN Numbers: P-16-419, P-16-423, and P-16-424

Chemical Names: N-alkyl-dialkyl piperidine (generic) (P-16-419), Tetraalkylpiperidinium halide (generic) (P-16-423), and Tetraalkylpiperidinium hydroxide (generic) (P-16-424).

CAS Numbers: Not available.

Effective Date of TSCA Order: April 15, 2020.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) uses will be as an intermediate (P-16-419 and P-16-423) and as a directing agent (P-16-424). Based on comparison to analogous chemical substances, EPA has identified concerns for acute toxicity, corrosion, systemic and respiratory effects (P-16-419). Based on comparison to analogous chemical substances and the high pH, EPA has identified concerns for acute oral toxicity, developmental/reproductive toxicity, neurotoxicity, renal effects, and corrosion to all tissues (P-16-423 and P-16-424). Based on comparison to analogous chemical substances, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 286 ppb for P-16-419 and 20 ppb for P-16-423 and P-16-424. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance which was the subject of P-16-424 is or will be produced in substantial quantities and that the substance either enters or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be a significant (or

substantial) human exposure to the substance. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 10 where there is a potential for inhalation exposure (P-16-419);
- Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- Use of P-16-419 only as a site-limited intermediate;
- Use of P-16-423 only as an intermediate;
- Use of P-16-424 only for the confidential use allowed in the Order; and
- No release of the PMN substances resulting in surface water concentrations that exceed 286 ppb (P-16-419) or 20 ppb (P-16-423 and P-16-424).

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially Useful Information: EPA as determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of aquatic toxicity and specific target organ toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substances. Additionally, the results of reproductive toxicity testing may be potentially useful to characterize the human health effects of PMNs P-16-423 and P-16-424. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citations: 40 CFR 721.11572 (P-16-419), 40 CFR 721.11573 (P-16-423), and 40 CFR 721.11574 (P-16-424).

PMN Numbers: P-17-235 and P-18-226

Chemical Names: Amidoamino quaternary ammonium salt (generic) (P-17-235), and Tri alkyl, mono alkoxy, fatty acid ester, ammonium salt (generic) (P-18-226).

CAS Numbers: Not available.

Effective Date of TSCA Order: April 22, 2020.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) use of the PMN substances will be as an anti-agglomerant. Based on the

surfactant properties of the compounds and comparison to analogous substances, EPA has identified concerns for surfactant effects on the lungs, irritation and possible corrosion to the eyes, skin, and respiratory tract. Based on comparison to analogous substances, EPA has also identified concerns for developmental toxicity. Based on comparison to analogous polycationic polymers, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 60 ppb for P-17-235 and 44 ppb for P-18-226. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of the PMN substances only for the uses allowed in the Order; and
- No release of the PMN substances resulting in surface water concentrations that exceed 44 ppb.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of chronic aquatic toxicity, reproductive toxicity, and pulmonary effects testing may be potentially useful to characterize the human health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citations: 40 CFR 721.11575 (P-17-235) and 40 CFR 721.11576 (P-18-226).

PMN Number: P-17-259

Chemical Name: Halogenated aromatic amine (generic).

CAS Number: Not available.

Effective Date of TSCA Order: August 31, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be as a curative for thermosetting resins. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for skin sensitization and systemic effects (liver, blood, and spleen). Based on comparison to

analogous anilines, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin sensitization, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11577.

PMN Number: P-18-43

Chemical Name: 1,4-Benzenedicarboxylic acid, 1,4-dipentyl ester, branched and linear.

CAS Number: 2097734-13-7.

Effective Date of TSCA Order: September 16, 2020.

Basis for TSCA Order: The PMN states that the use will be as a plasticizer or fast fuser in PVC-plastisols for flooring, wall paper, coated fabrics, underbody coating; processing aid or fast fuser in PVC dry blends for flooring, coated fabrics, films & sheets, tubes & hoses; flexibilizing additive for paints and lacquers; use in formulation or re-packing; and as a laboratory agent. Based on the potential metabolite terephthalic acid, EPA has identified concerns for systemic toxicity. Based on comparison to analogous esters, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the

environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance is expected to be produced in substantial quantities, and that there may be a significant or substantial human exposure to the substance, and that the substance may enter the environment in substantial quantities. To protect against these risks, the Order requires:

- No release of the PMN substance resulting in surface water concentrations that exceed 2 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of chronic aquatic toxicity testing may be potentially useful to characterize the environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11578.

PMN Numbers: P-18-178, P-18-217, and P-18-218

Chemical Names: Dialkyltin dialkylcarboxylate (generic) (P-18-178), Alkyltin dodecylthioester (generic) (P-18-217), and Alkyltin tetradecylthioester (generic) (P-18-218).

CAS Numbers: Not available.

Effective Date of TSCA Order: May 20, 2020.

Basis for TSCA Order: The PMNs state that the use of the substances will be as stabilizers for PVC compounds. Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially persistent, bioaccumulative, and toxic (PBT) chemicals (as described in the New Chemical Program’s PBT category at 64 FR 60194; November 4, 1999; FRL-6097-7). EPA estimates that the PMN substances will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on comparison to analogous chemical substances, EPA has identified concerns for immune, reproductive, developmental, and systemic effects. Based on comparison to analogous organotins, EPA predicts that toxicity to

aquatic organisms may occur at concentrations that exceed 2 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substances are or will be produced in substantial quantities and that the substances either enter or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be a significant (or substantial) human exposure to the substances. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 10 where there is a potential for inhalation exposure for P-18-178;
- No use of the PMN substances other than as stabilizers for PVC compounds; and
- No release of the PMN substances into the waters of the United States.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of persistence, bioaccumulation, aquatic toxicity, reproductive toxicity and specific target organ toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citations: 40 CFR 721.11579 (P-18-178), 40 CFR 721.11580 (P-18-217), and 40 CFR 721.11581 (P-18-218).

PMN Number: P-18-256

Chemical Name: Undecanol, branched.

CAS Number: 203473-00-4.

Effective Date of TSCA Order: August 18, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a chemical intermediate and

a solvent. Based on submitted test data on the new chemical substance, EPA has identified concerns for skin and eye irritation and systemic toxicity. Based on test data for structurally analogous chemical substance, EPA has also identified concerns for developmental and systemic toxicity. Based on comparison to analogous neutral organics, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance is expected to be produced in substantial quantities, and that there may be significant or substantial human exposure to the substance, and that the substance may enter the environment in substantial quantities. To protect against these risks, the Order requires:

- No use of the PMN substance other than as a chemical intermediate; and
- No release of the PMN substance resulting in surface water concentrations that exceed 4 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific organ toxicity, developmental toxicity, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11582.

PMN Number: P-18-283

Chemical Name: Hydroxy alkanolic acid, compds. with aminoalkoxyalcohol-epoxy polymer-alkanolamine reaction products (generic).

CAS Number: Not available.

Effective Date of TSCA Order: March 31, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be for open, non-dispersive use. Based on comparison to structurally analogous chemical substances for the low molecular weight (LMW) fractions of the PMN substance, EPA has identified concerns for irritation and sensitization. Based on comparison to structurally analogous chemical substances, EPA has also identified concerns for reproductive toxicity and systemic effects. Based on comparison to analogous aliphatic amines and polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
- No release of the PMN substance into the waters of the United States.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of aquatic toxicity, skin and eye irritation, skin sensitization, reproductive toxicity, and specific target organ toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on a submission of this or other relevant information.

CFR Citation: 40 CFR 721.11583.

PMN Number: P-18-298

Chemical Name: 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with ethyleneamine, 2-(chloromethyl)oxirane, 2-[[4-(1,1-dimethylethyl)phenoxy]methyl]oxirane, 2,2’-[1,6-hexanediyl]bis[oxymethylene] bis[oxirane], 4,4’-(1-methylethylidene) bis[phenol], alkyl ether amine, and 2-

[[2-methylphenoxy]methyl]oxirane (generic).

CAS Number: Not available.

Effective Date of TSCA Order: August 4, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as an epoxy curing agent. Based on comparison to structurally analogous amines and the LMW fractions, EPA has identified concerns for skin and eye irritation, dermal and respiratory sensitization, and lung effects. Based on the comparison to structurally analogous epoxide residuals, EPA has also identified concerns for reproductive toxicity and systemic effects. Based on comparison to analogous aliphatic amines and polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 50 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No manufacturing, processing, or use of the PMN substance in an application method that results in inhalation exposure;
- No use of the PMN substance in a consumer product; and
- No release of the PMN substance resulting in surface water concentrations that exceed 50 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of absorption, eye damage, skin irritation, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11584.

PMN Number: P-18-310

Chemical Name: Benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-

dimethylethyl)-4-hydroxy-2,2-bis(hydroxymethyl)butyl ester.

CAS Number: 2101609–93–0.

Effective Date of TSCA Order: August 14, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a polymer additive. Based on test data on structurally analogous chemical substances, EPA has identified concerns for blood, liver, thyroid and kidney effects, reproductive toxicity, and developmental toxicity. Based on comparison to analogous phenols and benzotriazoles, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 1,000 where there is a potential for inhalation exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
- No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if the manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of developmental neurotoxicity and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11585.

PMN Number: P–18–318

Chemical Name: 1-Octadecanaminium, N,N-dimethyl-N-[3-(triethoxysilyl)propyl]-, chloride (1:1).

CAS Number: 62117–57–1.

Effective Date of TSCA Order: September 25, 2020.

Basis for TSCA Order: The PMN states that the use will be as a surface treatment for added lubricity and anti-static purposes. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for irritation to the eyes, skin, and respiratory tract and liver effects. Based on comparison to structurally analogous chemical substances and structural alerts for cationic surfactants, EPA has also identified concerns for lung effects. Based on comparison to analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- Use of the PMN substance only as a surface treatment for added lubricity and anti-static properties;
- No use of the PMN substance in an application method that results in inhalation exposure; and
- No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation, pulmonary effects, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11586.

PMN Number: P–18–323

Chemical Name: 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
CAS Number: 156291–88–2.

Effective Date of TSCA Order: March 13, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the PMN substance will be as a raw material for polymer manufacturing. Based on submitted test data on the PMN substance and structural alerts, EPA has identified concerns for skin irritation and skin/respiratory sensitization. Based on comparison to structurally analogous chemical substances, EPA has also identified concerns for systemic, respiratory, and developmental effects. Based on comparison to analogous methacrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 98 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 50 to prevent inhalation exposure where there is a potential for inhalation exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- Use of the PMN substance only for the confidential use allowed in the Order; and
- No release of the PMN substance resulting in surface water concentrations that exceed 98 ppb.

The proposed SNUR designates as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that the results of chronic aquatic toxicity and specific target organ toxicity testing may be potentially useful to characterize the environmental and human health effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11587.

PMN Number: P-18-327

Chemical Name: Mixed metal oxide (generic).

CAS Number: Not available.

Effective Date of TSCA Order: August 21, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a filler for non-dispersive resins. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for dermal and respiratory sensitization. EPA has also identified concerns for lung effects (lung overload) if the particulate is respirable, based on information for other poorly soluble particulates, and carcinogenicity if the PMN substance is crystalline and respirable. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 1,000 where there is a potential for inhalation exposure, or compliance with a NCEL of 0.1 mg/m³ as an 8-hour time-weighted average (TWA) to prevent inhalation exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary toxicity, skin sensitization, and carcinogenicity testing may be potentially useful to characterize the human health effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11588.

PMN Number: P-18-347

Chemical Name: Amines, polyethylenepoly-, triethylenetetramine

fraction, polymers with guanidine hydrochloride (1:1).

CAS Number: 1902936-67-7.

Effective Date of TSCA Order: March 17, 2020.

Basis for TSCA Order: The PMN states that the use of the substance will be as an aldehyde scavenger for the manufacture of polyurethane foams. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for skin sensitization. Based on available test data on the PMN substance, EPA has also identified concerns for acute toxicity. Based on structural alerts for polycationic binding, EPA has also identified concerns for lung effects. Based on comparison to structurally analogous polycationic polymers, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
- No release of the PMN substance resulting in surface water concentrations that exceed 2 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that the results of aquatic toxicity, pulmonary effects and skin sensitization testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11589.

PMN Number: P-18-405

Chemical Name: Phenol, 4,4’-(1-methylethylidene)bis-, polymer with

3,6,9,12-tetraoxatetradeca-1, 13-diene, glycidyl ether.

CAS Number: 647028-24-8.

Effective Date of TSCA Order: August 7, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as an adhesive. Based on the epoxide moiety for the LMW fraction, EPA has identified concerns for skin and lung sensitization, carcinogenicity, developmental toxicity, male reproductive toxicity, liver, and kidney toxicity. Based on submitted test data, information in the SDS, and analogous epoxides, EPA has also identified concerns for skin irritation and genotoxicity. Based on comparison to analogous epoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against such risks, the Order requires:

- No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure;
- No use of the PMN substance in a consumer product; and
- No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary toxicity, skin sensitization, carcinogenicity, reproductive/developmental toxicity, skin and eye irritation, specific target organ toxicity and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11590.

PMN Number: P-19-36

Chemical Name: 1,4-Benzenedicarboxylic acid, 1,4-bis(2-phenoxyethyl) ester.

CAS Number: 25900-07-6.

Effective Date of TSCA Order: July 24, 2020.

Basis for TSCA Order: The PMN states that the use will be as an additive to polymers for improvement in gas barrier performance. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for irritation to the skin, eyes, and respiratory tract. Based on test data for terephthalic acid, EPA has also identified concerns for bladder effects and developmental effects. Based on test data for 2-phenoxyethanol, EPA has also identified concerns for blood effects, kidney effects, bladder effects, and respiratory tract effects. Based on comparison to analogous esters, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 1,000 where there is a potential for inhalation exposure; and
- No release of the PMN substance resulting in surface water concentrations that exceed 3 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, reproductive/developmental toxicity, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11591.

PMN Number: P-19-52

Chemical Name: Poly(oxy-1,2-ethanediyl), .alpha.-nonyl-.omega.-hydroxy-, branched and linear.

CAS Number: 2242406-13-7.

Effective Date of TSCA Order: February 14, 2020.

Basis for TSCA Order: The PMN states that the use of the PMN substance will be as a hard surface cleaner and as a component of laundry detergent. Based on repeating polyether units, EPA has identified concerns for surfactant effects on the lungs. Based on comparison to structurally analogous chemical substances, EPA has also identified concerns for eye corrosion and mild skin irritation. Based on alcohol ethoxylates, EPA has also identified liver, cardiac, and systemic effects. Based on comparison to analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 34 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 1,000 where there is potential for inhalation exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No use of the PMN substance where the concentration of the PMN substance in the product formulation intended for distribution in commerce exceeds 1% by weight; and
- No release of the PMN substance resulting in surface water concentrations that exceed 34 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute aquatic toxicity, chronic aquatic toxicity, pulmonary effects, specific target organ toxicity, eye damage, and skin irritation testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions still remain in effect until

the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11592.

PMN Number: P-19-53

Chemical Name: 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-.

CAS Number: 35501-23-6.

Effective Date of TSCA Order: August 5, 2020.

Basis for TSCA Order: The PMN states that the use of the substance will be as a surface treatment, sealant, caulk, and coating for mineral building materials such as concrete, brick, limestone, and plaster, as well as on wood, metal, and other substrates. Based on the alkoxy silanes category and reactivity of the new chemical substance, EPA has identified concerns for lung effects. Based on submitted test data, EPA has also identified concerns for skin sensitization and developmental effects. Based on comparison to analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur in concentrations that exceed 150 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of dermal protective equipment where there is a potential for dermal exposure;
- No import, processing, or use of the PMN substance other than in liquid form;
- No domestic manufacture (*i.e.*, import only); and
- No use of the PMN substance in a consumer product.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects and skin sensitization testing may be potentially useful to characterize the human health effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11593.

PMN Number: P-19-77

Chemical Name: Alkenylamide (generic).

CAS Number: Not available.

Effective Date of TSCA Order: March 31, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be for agricultural use. Based on available test data on a structurally analogous chemical substance, EPA has identified concerns for skin irritation, eye irritation, reproductive toxicity, and systemic toxicity. Based on information in the SDS, EPA has also identified concerns for respiratory tract irritation. Based on comparison to analogous amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- Use of the PMN substance only for the confidential use allowed in the Order; and
- No release of the PMN substance resulting in surface water concentrations that exceed 4 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that the results of eye damage, skin irritation, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11594.

PMN Number: P-19-131

Chemical Name: Isoalkylaminium, N-isoalkyl, -N, N-dimethyl chloride (generic).

CAS Number: Not available.

Effective Date of TSCA Order: July 24, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use

will be as an additive for horizontal oil drilling. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for irritation to the eyes and skin, systemic effects, lung effects, and developmental effects. Based on comparison to analogous chemical substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure;
- No use of the PMN substance in consumer products; and
- No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11595.

PMN Numbers: P-19-143 and P-19-144

Chemical Names: Aldehyde, polymer with mixed alkane polyamines, 2,2'-(1,4-alkanediylbis(oxyalkylene))bis[oxirane], 2-(alkoxyalkyloxirane, 4,4'-(1-alkylidene)bis[phenol], 2,2'-[(1-alkylidene)bis(4,1-alkyleneoxyalkylene)]bis[oxirane] and 2-(aryloxyalkyl)oxirane, acetate (salt) (generic) (P-19-143) and Alkanedioic acid, compds. with substituted

arylalkylamine-arylalcohol disubstituted alkane-the diglycidyl ether of a arylalcohol disubstituted alkane-epichlorohydrin-aldehyde-2,2'[(1-alkylidene)bis[4,1-aryleneoxy(alkyl-2,1-alkanediyl)oxyalkylene]]bis[oxirane]-alkanepolyamine polymer-1-[[2-(2-aminoalkyl)amino]alkyl]amino]-3-aryloxy-2-alcohol reaction products (generic) (P-19-144).

CAS Numbers: Not available.

Effective Date of TSCA Order: February 18, 2020.

Basis for TSCA Order: The PMNs state that the use of the substances will be as a crosslinking agent for use in epoxy resin for water-based coating for a variety of substrates and civil applications in commercial uses (P-19-143) and a crosslinking agent in epoxy based self-leveling floor coatings (P-19-144). EPA has identified concerns for lung effects (cationic binding) if respirable particles are inhaled. Based on structural alerts for polyamines, EPA has identified dermal and respiratory sensitization. Based on comparison to analogous chemical substances, EPA has identified concerns for skin and eye irritation. Based on the LMW species, EPA has also identified concerns for systemic, reproductive, and developmental effects. Based on comparison to analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance which was the subject of PMN P-19-143 is expected to be produced in substantial quantities, and that there may be significant or substantial human exposure to the substance, and that the substance may enter the environment in substantial quantities. To protect against these risks, the Order requires:

- No manufacture, processing, or use of the PMN substances in a manner that results in inhalation exposure to either the PMN substances or to formaldehyde;
- No use of the PMN substances in consumer products; and
- No release of the PMN substances resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects, eye irritation, skin irritation, skin sensitization, specific target organ toxicity, reproductive and developmental toxicity, and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citations: 40 CFR 721.11596 (P-19-143) and 40 CFR 721.11597 (P-19-144).

PMN Number: P-19-145

Chemical Name: Polyazaalkane with oxirane and methyloxirane, haloalkane (generic).

CAS Number: Not available.

Effective Date of TSCA Order: July 6, 2020.

Basis for TSCA Order: The PMN states that the use of the substance will be as an oil field drilling fluid additive. Based on structure, EPA has identified concerns for lung effects (surfactancy). Based on comparison to structurally analogous chemical substances, EPA has also identified concerns for neurological, systemic, and reproductive/developmental effects. Based on comparison to analogous cationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 26 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No manufacture, processing, or use of the PMN substance in a manner that results in inhalation exposure; and
- No release of the PMN substance resulting in surface water concentrations that exceed 26 ppb.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of neurotoxicity, specific target organ toxicity, pulmonary effects, reproductive/developmental effects, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11598.

PMN Number: P-19-153

Chemical Name: Dibromoalkyl ether tetrabromobisphenol A (generic).

CAS Number: None available.

Effective Date of TSCA Order: July 20, 2020.

Basis for TSCA Order: The PMN states that the use of the substance will be as a raw material in flame retardant products. Based on the physical/chemical properties of the PMN substance and of the photolysis product, the PMN substance and the photolysis product are potentially persistent, bioaccumulative, and toxic (PBT) chemicals (as described in the New Chemical Program's PBT category at 64 FR 60194; November 4, 1999; FRL-6097-7). EPA estimates that the PMN substance will persist in the environment for more than 6 months and estimates a bioaccumulation factor of greater than or equal to 1,000. EPA estimates that the photolysis product will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on available data on the PMN substance, EPA has identified concerns for eye irritation, systemic effects, and reproductive/developmental effects. Based on data for the photolysis product, EPA has also identified concerns for systemic effects and carcinogenicity. Based on comparison to analogous anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To

protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
- No release of the PMN substance into surface waters of the United States.

The proposed SNUR would designate as a "significant new use" in the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of environmental fate, bioaccumulation, specific target organ toxicity and carcinogenicity testing may be potentially useful to characterize the human health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11599.

PMN Number: P-20-29

Chemical Name: Octonal, 7(or 8)-formyl-

CAS Number: 1607842-40-9.

Effective Date of TSCA Order: August 5, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as an oil soluble additive. Based on submitted test data on the new chemical substance, EPA has identified concerns for skin and eye irritation, dermal sensitization, systemic toxicity, and neurotoxicity. Based on OECD Toolbox results, EPA has identified concerns for respiratory sensitization. Based on comparison to structurally analogous chemical substances, EPA has also identified concerns for respiratory effects. Based on comparison to analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 17 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No release of the PMN substance resulting in surface water concentrations that exceed 17 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of aquatic toxicity testing may be potentially useful to characterize the environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.115600.

PMN Number: P-20-42

Chemical Name: Sulfonium, trisaryl-, 7,7-dialkyl-2-heteropolycyclic-1-alkanesulfonate (1:1) (generic).

CAS Number: Not available.

Effective Date of TSCA Order: April 29, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the PMN substance will be as a photoacid generator. Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially persistent, bioaccumulative, and toxic (PBT) chemicals (as described in the New Chemical Program’s PBT category at 64 FR 60194; November 4, 1999; FRL-6097-7). EPA estimates that the PMN substances will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on the photoreactivity of the PMN substance, EPA has identified concerns for photosensitization. Based on comparison to analogous substances, EPA has identified concerns for eye corrosion, irritation, acute toxicity, liver toxicity, neurotoxicity, and reproductive (developmental) toxicity. EPA has also identified concerns for lung overload by insoluble polymers for photoacid generators with polymeric anions that have a molecular weight over 10,000 g/mol. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the

environment. To protect against these risks, the Order requires:

- No manufacture of the PMN substance beyond the time limits specified in the Order without submittal to EPA the results of certain testing described in the Testing section of the Order.
- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No modification of the processing of the PMN substance in any way that generates a vapor, dust, mist, or aerosol in a non-enclosed process;
- Use of the PMN substance only as described in the PMN;
- No domestic manufacture of the PMN substance (*i.e.*, import only);
- Import of the PMN substance only in solution, or in any form in sealed containers weighing 5 kilograms or less; and
- No exceedance of the confidential annual importation volume listed the Order.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the Order without performing the required Tier I and Tier II testing outlined in the Testing section of the Order.

CFR Citation: 40 CFR 721.11601.

PMN Number: P-20-104

Chemical Name: Alkenoic acid, polymer with (alkyl alkenyl) polyether (generic).

CAS Number: None available.

Effective Date of TSCA Order: August 25, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as an additive. Based on structural alerts and comparison to structurally analogous chemical substances, EPA has identified concerns for lung effects (surfactancy) and irritation to the skin, eyes, and respiratory tract. Based on comparison to structurally analogous chemical

substances, EPA has also identified concerns for systemic effects (*i.e.*, neurotoxicity and cardiotoxicity) and aquatic toxicity. Based on a residual which is present in the substance, EPA has also identified concerns for irritation/corrosion to the skin and eyes, skin sensitization, systemic effects, and developmental effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance is expected to be produced in substantial quantities, and that there may be significant or substantial human exposure to the substance, and that the substance may enter the environment in substantial quantities. To protect against these risks, the Order requires:

- No manufacture, processing, or use of the PMN substance in a manner that results in inhalation exposure;
- No use of the PMN substance in a consumer product;
- No release of the PMN substance resulting in surface water concentrations that exceed 75 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of aquatic toxicity testing may be potentially useful to characterize the environmental effects of the PMN substance. Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11602.

MCAN Number: J-16-26

Microorganism name: *Trichoderma reesei* modified (generic).

CAS number: Not applicable.

Effective Date of TSCA Order: April 10, 2017.

Basis for TSCA Order: The MCAN states that the generic (non-confidential) use of the microorganism will be for enzyme production. EPA determined that certain fermentation conditions, other than the typical submerged standard industrial fermentation process

for enzyme production, could result in increased exposures. Specifically, EPA is concerned that where growth on plant material or on solid substrates occurs, *T. reesei* has been shown to produce a secondary metabolite known as paracelsin, which is associated with a variety of toxic effects to mammalian and bacterial cells. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the microorganism may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No manufacture, processing, or use of the microorganism other than in a fermentation system that meets all of the following conditions:

(A) Enzyme production occurs by submerged fermentation (*i.e.*, for enzyme production, growth of the microorganism occurs beneath the surface of the liquid growth medium); and

(B) Any fermentation of solid plant material or insoluble substrate, to which *Trichoderma reesei* fermentation broth is added after the standard industrial fermentation is completed, is initiated only after the inactivation of the microorganism as delineated in 40 CFR 725.422(d).

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially useful information: EPA has determined that the results of the following studies would help characterize any potential human health and environmental effects of the MCAN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR:

- Investigation of whether paracelsin will be produced, and at what levels if the genetically-modified *T. reesei* is grown on various plant biomass materials for different durations under various fermentation conditions in cellulosic biomass facilities.

- If paracelsin is produced, a study of whether paracelsin would be denatured/inactivated during production and processing.

- If paracelsin is released from the facility, a study of whether paracelsin would be degraded/inactivated during wastewater treatment.

- If released to the environment, studies on the persistence, stability, dissemination, accumulation, and the potential resulting biological activity of paracelsin with exposure to aquatic and

terrestrial organisms in the environment.

- Studies to determine the ability of the MCAN microorganism to survive in the environment relative to the survival of the unmodified parent or recipient strain, and to assess its competitiveness with other fungi in the environment. This study may require some supplementation with one or more carbon sources and the use of various soil types.

- A study to determine survival of the fungus during an anaerobic fermentation for production of ethanol by an ethanologen, and survival of the fungus during ethanol distillation or at the distillation temperature for ethanol.

Although the Order does not require these tests, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 725.1081.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs and MCAN submitted for the chemical substances that are the subject to these proposed SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN and MCAN submitters. As a general matter, EPA believes it is necessary to follow the TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants:

- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins

manufacturing or processing a listed chemical substance for the described significant new use.

- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

VI. Applicability of the Proposed Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN (or MCAN, as applicable). Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA Orders have been issued for these chemical substances and the PMN and MCAN submitters are prohibited by the TSCA Orders from undertaking activities which would be designated as significant new uses. The identities of many of the chemical substances subject to this proposed rule have been claimed as confidential per 40 CFR 720.85 or 40 CFR 725.85 (for the microorganism). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates June 11, 2021 as the cutoff date for determining whether the new use is ongoing. The objective of EPA’s approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the

notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at <https://www.epa.gov/tscainventory>.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.*, generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, TSCA Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known or reasonably ascertainable (see 40 CFR 720.50 or 40 CFR 725.160 [for the microorganism]). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for the SNURs listed in this document. Descriptions of this information is provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/>

alternative-test-methods-and-strategies-reduce.

In some of the TSCA Orders for the chemical substances identified in this rule, EPA has established time limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same time limits as the TSCA Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the time limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information listed in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including

submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40. According to 40 CFR 725.900, persons submitting an MCAN for a significant new use of a microorganism must comply with the same notification requirements and EPA regulatory procedures as persons submitting an MCAN for a new microorganism, including submission of test data on health and environmental effects as described in 40 CFR 725.160. E-PMN software is available electronically at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca>.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket for this rulemaking.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action proposes to establish SNURs for several new chemical substances that were the subject of PMNs and an MCAN. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection activities associated with SNURs have already

been approved by OMB under the PRA and assigned OMB control number 2070-0012 (EPA ICR No. 574). This proposed rule does not contain any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including using automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a “significant new use.” Because these uses are “new,” based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA’s experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about \$10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a

substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA’s experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action would not have 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this proposed rule is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Parts 721 and 725

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 4, 2021.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

PARTS 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625(c).

■ 2. Add §§ 721.11571 through 721.11603 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

* * * * *

Sec.

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721.11571 Hindered amine alkyl ester compounds (generic).

721.11572 N-alkyl-dialkyl piperidine (generic).

721.11573 Tetraalkylpiperidinium halide (generic).

721.11574 Tetraalkylpiperidinium hydroxide (generic).

721.11575 Amidoamino quaternary ammonium salt (generic).

721.11576 Tri alkyl, mono alkoxy, fatty acid ester, ammonium salt (generic).

721.11577 Halogenated aromatic amine (generic).

- 721.11578 1,4-Benzenedicarboxylic acid, 1,4-dipentyl ester, branched and linear.
- 721.11579 Dialkyltin dialkylcarboxylate (generic).
- 721.11580 Alkyltin dodecylthioester (generic).
- 721.11581 Alkyltin tetradecylthioester (generic).
- 721.11582 Undecanol, branched.
- 721.11583 Hydroxy alkanolic acid, compds. with aminoalkoxyalcohol-epoxy polymer-alkanolamine reaction products (generic).
- 721.11584 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with ethyleneamine, 2-(chloromethyl)oxirane, 2-[[4-(1,1-dimethylethyl)phenoxy]methyl]oxirane, 2,2'-[1,6-hexanediylbis(oxyethylene)]bis[oxirane], 4,4'-(1-methylethylidene)bis[phenol], alkyl ether amine, and 2-[[2-methylphenoxyethyl]oxirane (generic).
- 721.11585 Benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-2,2-bis(hydroxymethyl)butyl ester.
- 721.11586 1-Octadecanaminium, N,N-dimethyl-N-[3-(triethoxysilyl)propyl]-, chloride (1:1).
- 721.11587 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
- 721.11588 Mixed metal oxide (generic).
- 721.11589 Amines, polyethylenepoly-, triethylenetetramine fraction, polymers with guanidine hydrochloride (1:1).
- 721.11590 Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 3,6,9,12-tetraoxatetradeca-1, 13-diene, glycidyl ether.
- 721.11591 1,4-Benzenedicarboxylic acid, 1,4-bis(2-phenoxyethyl) ester.
- 721.11592 Poly(oxy-1,2-ethanediyl), .alpha.-nonyl-.omega.-hydroxy-, branched and linear.
- 721.11593 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-.
- 721.11594 Alkenylamide (generic).
- 721.11595 Isoalkylaminium, N-isoalkyl-, -N-, N-dimethyl chloride (generic).
- 721.11596 Aldehyde, polymer with mixed alkane polyamines, 2,2'-[1,4-alkanediylbis(oxyalkylene)]bis[oxirane], 2-(alkoxyalkyloxirane, 4,4'-(1-alkylidene)bis[phenol], 2,2'-[(1-alkylidene)bis(4,1-alkyleneoxyalkylene)]bis[oxirane] and 2-(aryloxyalkyl)oxirane, acetate (salt) (generic).
- 721.11597 Alkanedioic acid, compds. with substituted arylalkylamine-arylalcohol disubstituted alkane-the diglycidyl ether of a arylalcohol disubstituted alkane-epichlorohydrin-aldehyde-2,2'-(1-alkylidene)bis[4,1-aryleneoxy(alkyl-2,1-alkanediyl)oxyalkylene)]bis[oxirane]-alkanepolyamine polymer-1-[[2-[(2-aminoalkyl)amino]alkyl]amino]-3-aryloxy-2-alcohol reaction products (generic).
- 721.11598 Polyazaalkane with oxirane and methyloxirane, haloalkane (generic).
- 721.11599 Dibromoalkyl ether tetrabromobisphenol A (generic).
- 721.11600 Octonal, 7(or 8)-formyl-.
- 721.11601 Sulfonium, trisaryl-, 7,7-dialkyl-2-heteropolycyclic-1-alkanesulfonate (1:1) (generic).

721.11602 Alkenoic acid, polymer with (alkyl alkenyl) polyether (generic).

* * * * *

§ 721.11571 Hindered amine alkyl ester compounds (generic).

(a) *Chemical substance and significant new uses subject to reporting.* The chemical substance generically identified as hindered amine alkyl ester compounds (PMN P-16-167) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iv), (a)(3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure of confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible). For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate (including solids or liquid droplets), gas/vapor (all substances in gas form), and combination gas/vapor and particulate (gas and liquid/solid physical states are present).

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(2)(i) through (v), (g)(3)(i) and (ii), (g)(4)(i) through (iii), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; blood effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The

provisions of § 721.185 apply to this section.

§ 721.11572 N-alkyl-dialkyl piperidine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as N-alkyl-dialkyl piperidine (PMN P-16-419) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iii), (a)(3) through (6), (b), and (c). When determining which persons are likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include gas/vapor (all substances in the gas form). For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (v), (g)(3)(ii), (g)(4), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin corrosion; serious eye damage; acute toxicity; specific target organ toxicity. For purposes of § 721.72(g)(4), toxicity to users: Water release restrictions apply. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=286.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are

applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11573 Tetraalkylpiperidinium halide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as tetraalkylpiperidinium halide (PMN P-16-423) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b), and (c). When determining which persons are likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(ii), (g)(4), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), the substance may cause: Acute toxicity; specific target organ toxicity; reproductive toxicity. For purposes of § 721.72(g)(4), notice to users: Water release restrictions apply. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=20.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11574 Tetraalkylpiperidinium hydroxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as tetraalkylpiperidinium hydroxide (PMN P-16-424) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iii), (a)(3), (b), and (c). When determining which persons are likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (v), (g)(3)(ii), (g)(4), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin corrosion; serious eye damage; acute toxicity; specific target organ toxicity; reproductive toxicity. For purposes of § 721.72(g)(4), notice to users: Water release restrictions apply. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=20.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The

provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii).

§ 721.11575 Amidoamino quaternary ammonium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as amidoamino quaternary ammonium salt (PMN P-17-235) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=44.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11576 Tri alkyl, mono alkoxy, fatty acid ester, ammonium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as tri alkyl, mono alkoxy, fatty acid ester, ammonium salt (PMN P-18-226) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=44.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11577 Halogenated aromatic amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated aromatic amine (PMN P-17-259) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11578 1,4-Benzenedicarboxylic acid, 1,4-dipentyl ester, branched and linear.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,4-benzenedicarboxylic acid, 1,4-dipentyl ester, branched and linear (PMN P-18-43; CAS No. 2097734-13-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=2.

(ii) [Reserved]

(b) *Specific requirements.* The provision of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are

applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11579 Dialkyltin dialkylcarboxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as dialkyltin dialkylcarboxylate (PMN P-18-178) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(3) through (6), and (c). When determining which persons are likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate (including solids or liquid droplets).

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance other than as a stabilizer for PVC compounds.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11580 Alkyltin dodecylthioester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically

identified as alkyltin dodecylthioester (PMN P-18-217) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(3), and (c). When determining which persons are likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance other than as a stabilizer for PVC compounds.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section

§ 721.11581 Alkyltin tetradecylthioester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as alkyltin tetradecylthioester (PMN P-18-218) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(3), and (c). When determining which persons are likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be

considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance other than as a stabilizer for PVC compounds.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section

§ 721.11582 Undecanol, branched.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as undecanol, branched (PMN P-18-256) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=4.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11583 Hydroxy alkanolic acid, compds. with aminoalkoxyalcohol-epoxy polymer-alkanolamine reaction products (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as hydroxy alkanolic acid, compds. with aminoalkoxyalcohol-epoxy polymer-alkanolamine reaction products (PMN P-18-283) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iii), (a)(3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) and (v), (g)(3)(ii), (g)(4)(iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; skin sensitization; eye irritation; specific target organ toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11584 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with ethyleneamine, 2-(chloromethyl)oxirane, 2-[[4-(1,1-dimethylethyl)phenoxy]methyl]oxirane, 2,2'-[1,6-hexanediylbis(oxyethylene)]bis[oxirane], 4,4'-(1-methylethylidene)bis[phenol], alkyl ether amine, and 2-[(2-methylphenoxy)methyl]oxirane (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with ethyleneamine, 2-(chloromethyl)oxirane, 2-[[4-(1,1-dimethylethyl)phenoxy]methyl]oxirane, 2,2'-[1,6-hexanediylbis(oxyethylene)]bis[oxirane], 4,4'-(1-methylethylidene)bis[phenol], alkyl ether amine, and 2-[(2-methylphenoxy)methyl]oxirane

(PMN P-18-298) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance for an application method that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=50.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11585 Benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-2,2-bis(hydroxymethyl)butyl ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-2,2-bis(hydroxymethyl)butyl ester (PMN P-18-310; CAS No. 2101609-93-0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iii), (a)(3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor

(APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include gas/vapor and particulate.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.16 mg/m³ as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(3)(ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Specific target organ toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11586 1-Octadecanaminium, N,N-dimethyl-N-[3-(triethoxysilyl)propyl]-, chloride (1:1).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1-octadecanaminium, N,N-dimethyl-N-[3-(triethoxysilyl)propyl]-, chloride (1:1) (PMN P-18-318; CAS No. 62117-57-1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(3)(ii), and (g)(5). For purposes of § 721.72(g)(1), this

substance may cause: Skin irritation; eye irritation; specific target organ toxicity. For purposes of § 721.72(e), the concentration is set at 1.0%. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance other than as a surface treatment for added lubricity and anti-static properties. It is a significant new use to use the substance in an application method that results in inhalation exposure to workers.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (f) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11587 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 2-propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester (PMN P-18-323; CAS No. 156291-88-2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iii), (a)(3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of

the substance include particulate (including solids or liquid droplets) and gas/vapor (all substances in the gas form).

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(2)(i) through (v), (g)(3)(i) and (ii), (g)(4)(i) through (iii), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: skin irritation; developmental effects; systemic effects; respiratory effects; skin sensitization; respiratory sensitization. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer use.* Requirements as specified in § 721.80(k).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=98.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11588 Mixed metal oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as mixed metal oxide (PMN P-18-327) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators

must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate (including solids or liquid droplets).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.1 mg/m³ as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(2), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: cancer; skin sensitization; respiratory sensitization; specific target organ toxicity.

Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(g)(2), when using this substance: avoid skin contact, avoid breathing substance, avoid ingestion, use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.1 mg/m³, and use skin protection.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11589 Amines, polyethylenepoly-, triethylenetetramine fraction, polymers with guanidine hydrochloride (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as amines, polyethylenepoly-, triethylenetetramine fraction, polymers with guanidine hydrochloride (1:1) (PMN P-18-347; CAS No. 1902936-67-7) is subject to reporting under this

section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) and (v), (g)(3)(i) and (ii), (g)(4)(i), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: acute toxicity; skin sensitization; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=2.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11590 Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 3,6,9,12-tetraoxatetradeca-1, 13-diene, glycidyl ether.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as phenol, 4,4'-(1-methylethylidene)bis-, polymer with 3,6,9,12-tetraoxatetradeca-1, 13-diene, glycidyl ether (PMN P-18-405; CAS No. 647028-24-8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11591 1,4-Benzenedicarboxylic acid, 1,4-bis(2-phenoxyethyl) ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,4-benzenedicarboxylic acid, 1,4-bis(2-phenoxyethyl) ester (PMN P-19-36; CAS No. 25900-07-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure of confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate (including solids or liquid droplets).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=3.

(b) *Specific requirements.* The provisions of subpart A of this part may apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11592 Poly(oxy-1,2-ethanediyl), .alpha.-nonyl-.omega.-hydroxy-, branched and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), .alpha.-nonyl-.omega.-hydroxy-, branched and linear (PMN P-19-52; CAS No. 2242406-13-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iii), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate (including solids or liquid droplets). For purposes of § 721.63(b), the concentration is set at 1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; internal organ effects; eye corrosion. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to use the substance where the concentration of the substance in the product formulation intended for distribution in commerce exceeds 1% by weight.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=34.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11593 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]- (PMN P-19-53; CAS No. 35501-23-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o). It is a significant new use to process and use the substance other than in a liquid formulation.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11594 Alkenylamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as alkenylamide (PMN P-19-77) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=4.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11595 Isoalkylaminium, N-isoalkyl, -N, N-dimethyl chloride (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as isoalkylaminium, N-isoalkyl, -N, N-dimethyl chloride (PMN P-19-131) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(3)(ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (f) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11596 Aldehyde, polymer with mixed alkane polyamines, 2,2'-(1,4-alkanediylbis(oxyalkylene))bis[oxirane], 2-(alkoxyalkyloxirane, 4,4'-(1-alkylidene)bis[phenol], 2,2'-[(1-alkylidene)bis(4,1-alkyleneoxyalkylene)]bis[oxirane] and 2-(aryloxyalkyl)oxirane, acetate (salt) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as aldehyde, polymer with mixed alkane polyamines, 2,2'-(1,4-alkanediylbis(oxyalkylene))bis[oxirane], 2-(alkoxyalkyloxirane, 4,4'-(1-alkylidene)bis[phenol], 2,2'-[(1-alkylidene)bis(4,1-alkyleneoxyalkylene)]bis[oxirane] and 2-(aryloxyalkyl)oxirane, acetate (salt) (PMN P-19-143) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured) or destroyed.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure to either the PMN substance or to formaldehyde.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11597 Alkanedioic acid, compds. with substituted arylalkylamine-arylalcohol disubstituted alkane-the diglycidyl ether of a arylalcohol disubstituted alkane-epichlorohydrin-aldehyde-2,2'-(1-alkylidene)bis[4,1-aryleneoxy(alkyl-2,1-alkanediyl)oxyalkylene]]bis[oxirane]-alkanepolyamine polymer-1-[[2-[(2-aminoalkyl)amino]alkyl]amino]-3-aryloxy-2-alcohol reaction products (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as alkanedioic acid, compds. with substituted arylalkylamine-arylalcohol disubstituted alkane-the diglycidyl ether of a arylalcohol disubstituted alkane-epichlorohydrin-aldehyde-2,2'-(1-alkylidene)bis[4,1-aryleneoxy(alkyl-2,1-alkanediyl)oxyalkylene]]bis[oxirane]-alkanepolyamine polymer-1-[[2-[(2-aminoalkyl)amino]alkyl]amino]-3-aryloxy-2-alcohol reaction products (PMN P-19-144) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured) or destroyed.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure to either the PMN substance or to formaldehyde.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11598 Polyazaalkane with oxirane and methyloxirane, haloalkane (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as polyazaalkane with oxirane and methyloxirane, haloalkane (PMN P-19-145) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the

substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: reproductive toxicity; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=26.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (f) through (h), (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11599 Dibromoalkyl ether tetrabromobisphenol A (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as dibromoalkyl ether tetrabromobisphenol A (PMN P-19-153) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(3)(ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: eye irritation; carcinogenicity;

reproductive toxicity; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11600 Octonal, 7(or 8)-formyl-

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as Octonal, 7(or 8)-formyl- (PMN P-20-29; CAS No. 1607842-40-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=17.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11601 Sulfonium, trisaryl-, 7,7-dialkyl-2-heteropolycyclic-1-alkanesulfonate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, trisaryl-, 7,7-dialkyl-2-heteropolycyclic-1-alkanesulfonate (1:1) (PMN P-20-42) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article

used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11602 Alkenoic acid, polymer with (alkyl alkenyl) polyether (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as alkenoic acid, polymer with (alkyl alkenyl) polyether (PMN P-20-104) is subject to reporting under

this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=75.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

* * * * *

PART 725—REPORTING REQUIREMENTS AND REVIEW PROCESSES FOR MICROORGANISMS

■ 3. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

■ 4. Add § 725.1081 to read as follows:

§ 725.1081 Trichoderma reesei (generic).

(a) *Microorganism and significant new uses subject to reporting.* (1) The genetically-modified microorganism generically identified as *Trichoderma reesei* modified (MCAN J-16-26) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2)(i) It is a significant new use to manufacture, process, or use the microorganism other than in a fermentation system that meets all of the following conditions:

(A) Enzyme production occurs by submerged fermentation (i.e., for enzyme production, growth of the microorganism occurs beneath the surface of the liquid growth medium); and

(B) Any fermentation of solid plant material or insoluble substrate to which *Trichoderma reesei* fermentation broth is added after the standard industrial fermentation is completed is initiated only after the inactivation of the

microorganism as delineated in § 725.422(d).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart L of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 725.950(b)(2) through (4) are applicable to manufacturers and processors of this microorganism.

(2) *Modification or revocation of certain notification requirements.* The provisions of § 725.984 apply to this section.

* * * * *

[FR Doc. 2021-12147 Filed 6-10-21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210607-0122]

RIN 0648-BK55

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2021–2023 Small-Mesh Multispecies Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes small-mesh multispecies specifications for the 2021 fishing year, and projected specifications for fishing years 2022 and 2023, as recommended by the New England Fishery Management Council. This action also proposes changes to whiting possession limits on certain trips and would restore the in-season adjustment trigger for northern red hake. This action is necessary to establish allowable harvest levels and other management measures consistent with the most recent scientific information.

This rule also informs the public of the proposed fishery specifications and provides an opportunity for comment.

DATES: Comments must be received by June 28, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0043, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to <https://www.regulations.gov>, and enter “NOAA–NMFS–2021–0043” in the Search box;

2. Click the “Comment” icon, complete the required fields; and

3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

The New England Fishery Management Council prepared a draft environmental assessment (EA) for this action that describes the proposed measures and other considered alternatives. The EA also provides an economic analysis, as well as an analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives. Copies of the specifications document, including the EA and information on the economic impacts of the proposed measures, are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also accessible via the internet at <https://www.nefmc.org/library/2021-2023-whiting-specifications>.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies fishery comprises three species of hakes that are managed as five stocks: Northern and southern silver hake; northern and southern red hake; and offshore hake. Southern silver hake and offshore hake are often grouped together for management purposes and collectively referred to as “southern whiting.” The New England Fishery Management Council manages the small-mesh multispecies fishery within the Northeast Multispecies Fishery Management Plan (FMP). This action proposes catch limit specifications for the 2021 small-mesh multispecies fishery, and projects specifications for fishing years 2022 and 2023, based on the Council’s recommendations.

This action would also increase whiting (silver hake and offshore hake) possession limits on trips using gear with less than 3-in (7.62-cm) mesh from 3,500 pounds (lb) (1,588 kilograms (kg)) or 7,500 lb (3,402 kg) to 15,000 lb (6,804 kg), and restore the in-season adjustment trigger for northern red hake to 90 percent from 37.9 percent. These recommended changes reflect the most recent stock assessment information (September 2020), and are intended to increase fishing flexibility, decrease regulatory discards, and promote rebuilding of the southern red hake stock.

Proposed Specifications

This action proposes the Council’s recommendations for 2021 and projected 2022–2023 small-mesh multispecies catch specifications, as well as revised management measures reduce regulatory discards. These proposed catch limits would increase annual quotas for southern whiting and both red hake stocks, and decrease the quota for northern silver hake (Table 1). Specifications for fishing years 2022 and 2023 are projected to be the same as the proposed 2021 limits.

TABLE 1—PROPOSED SMALL-MESH MULTISPECIES SPECIFICATIONS FOR FISHING YEARS 2021–2023 (METRIC TONS), WITH THE PERCENT CHANGE IN THE TOTAL ALLOWABLE LANDINGS (TAL) FROM FISHING YEAR 2020

	Overfishing limit	Acceptable biological catch	Annual catch limit	TAL	Percent change
Northern Red Hake	N/A	3,452	3,278	1,405	+413
Northern Silver Hake	39,930	20,410	19,387	17,457	–34
Southern Red Hake	N/A	1,505	1,429	422	+89

TABLE 1—PROPOSED SMALL-MESH MULTISPECIES SPECIFICATIONS FOR FISHING YEARS 2021–2023 (METRIC TONS), WITH THE PERCENT CHANGE IN THE TOTAL ALLOWABLE LANDINGS (TAL) FROM FISHING YEAR 2020—Continued

	Overfishing limit	Acceptable biological catch	Annual catch limit	TAL	Percent change
Southern Whiting	72,160	40,990	38,941	28,742	+99

In a separate action that is currently in the rulemaking process, the Council adopted a 10-year rebuilding program for southern red hake because this stock was declared overfished in 2018.

Although the rebuilding plan has not yet been implemented in a final rule, the proposed southern red hake Acceptable Biological Catch (ABC) is intended to be consistent with the Council's proposed rebuilding plan, even though the proposed quota for the species is higher than in fishing year 2020. The Council recommended an increased ABC, but at a level lower than what was recommended by its Scientific and Statistical Committee, to decrease regulatory discards and allow continued operation of the fishery while still enhancing the rebuilding potential for southern red hake.

This proposed action would also revise management measures within the small-mesh multispecies fishery to reduce discards and improve fishery operations. The Council recommends increasing the possession limit for southern whiting on trips using gear with less than 3-in (7.62-cm) mesh to 15,000 lb (6,804 kg) to reduce regulatory discards. This action also proposes that the in-season adjustment trigger for northern red hake be reset to 90 percent of the annual quota, from the current trigger of 37.9 percent. The trigger was most recently reduced in fishing year 2017 to account for annual catch overages on the stock, and has been reduced multiple times prior in fishing years 2014 and 2015 from the original 90 percent. However, catches of northern red hake have been well below specified catch limits since the large 2014 year class of new young fish entered the fishery. Thus, this change in the in-season adjustment trigger for northern red hake is intended to avoid unnecessarily restrictive in-season accountability measures on the fishery, and further reduce excessive regulatory discards.

The Council will review the projected 2022 and 2023 specifications to determine if any changes need to be made prior to their final implementation. Changes may occur if quota overages trigger accountability measures, or if new stock information results in changes to the ABC

recommendations. The rebuilding plan for southern red hake that is currently undergoing review in a separate rulemaking will not change any of these proposed specifications. NMFS will publish a notice prior to the 2022 and 2023 fishing years to confirm the projected specifications or announce any necessary changes.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Council reviewed the proposed regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The proposed action would impact all permitted vessels or affiliated groups that participate in small-mesh multispecies fisheries. The Council considered any business with at least one open access multispecies K permit, or other northeast multispecies permit that allows possession of hakes, in this evaluation, as well as any active entities that landed any small-mesh multispecies for commercial sale in 2019. As of June 1, 2020, NMFS had issued 798 commercial open-access (small-mesh) permits; therefore, 798 permits would be regulated by this action. According to the ownership database, there are 627 distinct business entities that hold at least one permit regulated by the proposed action, and of those 627 entities, all are engaged in

commercial fishing, although 106 did not have revenues (were not active) in 2019. Of those 627 entities potentially affected by this action, 618 are categorized as small entities and 9 are categorized as large entities. It was found that on average these small businesses derive less than four percent of their total fishing income from the small-mesh multispecies fishery, and that this fishery serves as more of a supplement to their overall fishing revenue rather than the primary source.

This action, which proposes higher catch limits for most stocks and increases a whiting possession limit primarily to reduce regulatory discards, is expected to provide operational flexibility and opportunity in the fishery without increasing risk to the resource or substantially changing fishing behavior. Under this action, annual quotas would increase for southern whiting and both red hake stocks and decrease for northern silver hake. While permit holders may experience a slight positive impact from higher landings of some species throughout the course of the year, short-term landings are not expected to increase. Further, over the long-term of several years, the small increases in annual quotas will likely be negligible when balanced with the decreased access to northern silver hake. Also, the proposed changes to management measures, such as the whiting trip limit and northern red hake trigger, are primarily intended to reduce regulatory discards and prevent over-restriction of stable stocks in the fishery. These measures are expected to allow normal operation of the fishery to continue further into the year, and are not expected to change fishing behavior overall.

The Council's analyses indicate that the overall economic impact of proposed action is expected to be negligible to slightly positive, and that the proposed specifications are not expected to substantially change fishing effort, risk of overfishing, prices/revenues, or fishery behavior. The proposed measures are intended to provide operational flexibility and fishing opportunities, while preventing overharvest of the stocks. Therefore, the Council concluded, and NMFS agrees, that this action would not have a

significant economic impact on a substantial number of small businesses. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action would not establish any new reporting or record-keeping requirements.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 2021.

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 proposed to be 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 § 648.86, revise paragraph (d)(1)(i), and remove and reserve paragraph (d)(1)(ii) to read as follows:

§ 648.86 NE Multispecies possession
restrictions.

* * * * *

(d) * * *
(1) * * *

(i) *Vessels possessing on board or using nets of mesh size smaller than 3 in (7.62 cm).* Owners or operators of a vessel may possess and land not more than 15,000 lb (6,804 kg) of combined silver hake and offshore hake, if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). “Incorporated into a fully constructed net” means that any mesh smaller than 3 inches (7.62 cm) that is incorporated into a fully constructed net may occur only in the part of the net not

subject to the mesh size restrictions specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

* * * * *

■ 3. In § 648.90, revise paragraph (b)(5)(iii) to read as follows:

§ 648.90 NE multispecies assessment,
framework procedures and specifications,
and flexible area action system.

* * * * *

(b) * * *
(5) * * *

(iii) *Small-mesh multispecies in-season adjustment triggers.* The small-mesh multispecies in-season accountability measure adjustment triggers are as follows:

Species	In-season adjustment trigger (percent)
Northern Red Hake	90
Northern Silver Hake	90
Southern Red Hake	40.4
Southern Silver Hake	90

* * * * *

[FR Doc. 2021–12282 Filed 6–10–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 86, No. 111

Friday, June 11, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet virtually via Microsoft Teams. 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/stnf/workingtogether/advisorycommittees>.

DATES: The meetings will be held on:

- Monday, July 12, 2021, at 4:30 p.m., Pacific Daylight Time; and
- Monday, July 26, 2021, at 4:30 p.m., Pacific Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually via Microsoft Teams.

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 the Weaverville Ranger Station. Please call ahead at 530-623-2121 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lejon Hamann, RAC Coordinator, by

phone at 530-410-1935 or via email at lejon.hamann@usda.gov.

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Allow for any public comments;
2. Discuss and approve guiding documents;
3. Discuss the project proposal process;
4. Hear project proposal presentations; and
5. Discuss, recommend, and approve projects that have been submitted.

The meetings are open to the public. The agendas 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 the Thursday before each of the scheduled meetings to be scheduled on the agenda for that particular meeting. 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 meetings. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002; or by email to lejon.hamann@usda.gov.

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 accommodation. 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.

Dated: June 7, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021-12257 Filed 6-10-21; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet virtually via Microsoft Teams. 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/klamath/workingtogether/advisorycommittees>.

DATES: Meetings will be held on:

- Thursday, July 8, 2021, at 11:00 a.m., Pacific Daylight Time; and
- Thursday, July 22, 2021, at 11:00 a.m., Pacific Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually via Microsoft Teams.

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 the Mt. Shasta Ranger Station. Please call ahead at 530-926-4511 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lejon Hamann, RAC Coordinator, by phone at 530-410-1935 or via email at lejon.hamann@usda.gov.

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Allow for any public comments;
 2. Discuss and approve guiding documents;
 3. Discuss the project proposal process;
 4. Hear project proposal presentations; and
 5. Discuss, recommend, and approve projects that have been submitted.
 The meetings are open to the public. The agendas 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 the Tuesday before each of the scheduled meetings to be scheduled on the agenda for that particular meeting. 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 meetings. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002; or by email to lejon.hamann@usda.gov.

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 accommodation. 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.

Dated: June 7, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021-12260 Filed 6-10-21; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS-21-CO-OP-0015]

Inviting Applications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: This Notice announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2021 applications for the Rural Cooperative Development Grant (RCDG) program. The program funding level for FY 2021 is a total of \$5.8 million. The purpose of this program is to provide financial assistance to improve the economic condition of rural areas

through cooperative development. Eligible applicants are non-profit corporations and institutions of higher education.

DATES: Completed applications must be submitted electronically by no later than 11:59 p.m. Eastern Time, August 10, 2021, through *Grants.gov*, to be eligible for grant funding. Please review the *Grants.gov* website at <https://www.grants.gov/web/grants/register.html> for instructions on the process of registering your organization as soon as possible to ensure that you are able to meet the electronic application deadline. Late applications are not eligible for funding under this Notice and will not be evaluated.

ADDRESSES: You are encouraged to contact your USDA Rural Development State Office well in advance of the application deadline to discuss your project and ask any questions about the RCDG program or the application process. Contact information for State Offices can be found at <http://www.rd.usda.gov/contact-us/state-offices>.

Program guidance as well as application and matching funds templates may be obtained at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>. To submit an electronic application, follow the instructions for the RCDG funding announcement located at <http://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT: Lisa Sharp, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Mail Stop-3226, Room 5160-South, Washington, DC 20250-3226, (202) 720-1400 or email to lisa.sharp@usda.gov.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Cooperative Development Grants.

Announcement Type: Initial Notice.

Catalog of Federal Domestic Assistance Number: 10.771.

Date: Application Deadline.

Electronic applications must be received by <http://www.grants.gov> no later than 11:59 p.m. Eastern Time, August 10, 2021, or it will not be considered for funding.

The Application Template provides specific, detailed instructions for each item of a complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using the

examples and illustrations in the Application Template. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to July 12, 2021. Agency contact information can be found in Section D of this document.

Hemp Related Projects: Please note that no assistance or funding can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as defined by the Agriculture Improvement Act of 2018, Public Law 115-334. Verification of valid hemp licenses will occur at the time of award.

Persistent Poverty Counties: Section 736 of the Consolidated Appropriations Act, 2021, designates funding for projects in Persistent Poverty counties. Persistent Poverty counties as defined in Section 736 is "any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007-2011 American Community Survey 5-year average, or any territory or possession of the United States." Another provision in Section 736 expands the eligible population in Persistent Poverty counties to include any county seat of such a persistent poverty county that has a population that does not exceed the authorized population limit by more than 10 percent. This provision expands the current 50,000 population limit to 55,000 for only county seats located in Persistent Poverty counties. Therefore, applicants and/or beneficiaries of technical assistance services located in Persistent Poverty county seats with populations up to 55,000 (per the 2010 census) are eligible.

COVID-19 Administrative Relief Exceptions: The Agency reviewed the Office of Budget and Management's (OMB) Memorandum M-20-17 entitled "Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations", and OMB Memorandum M-20-11, "Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19)", and has made every attempt to reduce administrative burden within our authority. Any reduction in burden will be discussed within the requirement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been

approved by the Office of Management and Budget (OMB) under OMB Control Number 0570-0006.

A. Program Description

The RCDG program is authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(e)), as amended by the Agriculture Improvement Act of 2018 (Pub. L. 115-334). You are required to comply with the regulations for this program published at 7 CFR part 4284, subparts A and F, which are incorporated by reference in this Notice. Therefore, you should become familiar with these regulations. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. Grants are awarded on a competitive basis. The maximum award amount per grant is \$200,000. Grants are available for non-profit corporations and institutions of higher education only. Grant funds may be used to pay for up to 75 percent of the cost of establishing and operating centers for rural cooperative development. Grant funds may be used to pay for 95 percent of the cost of establishing and operating centers for rural cooperative development when the applicant is a college identified as a "1994 Institution" for purposes of the Equity in Educational Land-Grant Status Act of 1994, as defined by 7 U.S.C. 301. The 1994 Institutions are commonly known as Tribal Land Grant Institutions. Centers may have the expertise on staff, or they can contract out for the expertise to assist individuals or entities in the startup, expansion or operational improvement of rural businesses, especially cooperative or mutually-owned businesses.

Definitions

Certain terms relating to the RCDG program that you will need to understand are defined at 7 CFR 4284.3 and 7 CFR 4284.504. In addition, the terms "rural" and "rural area," defined at section 343(a)(13) of the CONACT (7 U.S.C. 1991(a)(13)), are incorporated by reference, and will be used for this program instead of the definition of "Rural and rural area" currently published at 7 CFR 4284.3. The term "you" referenced throughout this Notice should be understood to mean "you" the applicant. Finally, there has been some confusion about the Agency's interpretation of the terms "conflict of interest" and "mutually-owned business" because they are not defined in the CONACT or in the regulations used for the program. Therefore, the

Agency is clarifying those terms for the purpose of this program as follows:

Conflict of interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of a conflict of interest occurs when an employee of the grantee, an individual on the grantee's board of directors, or an immediate family member of either, has the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Mutually-owned business—An organization owned and governed by members who are its consumers, producers, employees, or suppliers.

B. Federal Award Information

Type of Award: Competitive Grant.

Fiscal Year Funds: FY 2021.

Total Funding: \$5,800,000.

Maximum Award: \$200,000.

Anticipated Award Date: September 30, 2021.

C. Eligibility Information

Applicants must meet all of the following eligibility requirements. Applications which fail to meet any of these requirements by the application deadline will be deemed ineligible and will not be evaluated further.

1. Eligible Applicants

You must be a nonprofit corporation or an institution of higher education to apply for this program. Public bodies and individuals cannot apply for this program. See 7 CFR 4284.507. You must also meet the following requirements:

a. An applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Agency will check the System for Award Management (SAM) at the time of application and also prior to funding any grant award to determine if the

applicant has been debarred or suspended. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. See 7 CFR 4284.6. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the Do Not Pay System at the time of application and also prior to funding any grant award to verify this information.

b. Any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months or that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. Note: You no longer must complete the Form AD 3030, "Representation Regarding Felony Corporations and Tax Delinquent Status for Corporate Applicants" as a part of your application. This information is now collected through your registration or annual recertification in SAM.gov via the Financial Assistance General Certifications and Representations.

c. Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6(a) or (b) of this Notice. The inclusion of funding restrictions outlined in Section D.6(a) or (b) of this Notice precludes the Agency from making a federal award to the applicant.

d. Applications will be deemed ineligible if the application is deemed incomplete in accordance with the requirements stated in Section C.3.

2. Cost Sharing or Matching

Your matching funds requirement is at least 25 percent of the total project cost (5 percent for 1994 Institutions). See 7 CFR 4284.508. When you calculate your matching funds requirement, please round up or down to whole dollars as appropriate. An example of how to calculate your matching funds is as follows:

a. Take the amount of grant funds you are requesting and divide it by .75. This will give you your total project cost.

Example: \$200,000 (grant amount)/.75 (percentage for use of grant funds) = \$266,667 (total project cost)

b. Subtract the amount of grant funds you are requesting from your total project cost. This will give you your matching funds requirement.

Example: \$266,667 (total project cost) – \$200,000 (grant amount) = \$66,667 (matching funds requirement)

c. A quick way to double check that you have the correct amount of matching funds is to take your total project cost and multiply it by .25.

Example: \$266,667 (total project cost) × .25 (maximum percentage of matching funds requirement) = \$66,667 (matching funds requirement)

You must verify that all matching funds are available during the grant period and provide this documentation with your application in accordance with requirements identified in Section D.2.e.8. If you are awarded a grant, additional verification documentation may be required to confirm the availability of matching funds.

Other rules for matching funds that you must follow are listed below.

- They must be spent on eligible expenses during the grant period.
- They must be from eligible sources.
- They must be spent in advance or as a pro-rata portion of grant funds being spent.
- They must be provided by either the applicant or a third party in the form of cash or an in-kind contribution.
- They cannot include board/advisory council member's time.
- They cannot include other Federal grants unless provided by authorizing legislation.
- They cannot include cash or in-kind contributions donated outside of the grant period.
- They cannot include over-valued, in-kind contributions.
- They cannot include any project costs that are ineligible under the RCDG program.
- They cannot include any project costs that are restricted or unallowable under 2 CFR part 200, subpart E, and the Federal Acquisition Regulation (for-profits) or successor regulation.
- They can include loan funds from a Federal source.
- They can include travel and incidentals for board/advisory council members if you have established written policies explaining how these costs are normally reimbursed, including rates.

You must include an explanation of this policy in your application or the contributions will not be considered as eligible matching funds.

- You must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a matching funds requirement.
- In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by you cannot be provided for the direct benefit of their own projects as USDA Rural Development considers this to be a conflict of interest or the appearance of a conflict of interest.

3. Other Eligibility Requirements

a. Completeness

Your application will not be considered for funding if it fails to meet all eligibility criteria by the application deadline or does not provide sufficient information to determine eligibility and scoring. You must include in one submission to the Agency all of the forms and proposal elements as discussed in the program regulation and as clarified further in this Notice. Incomplete applications will not be reviewed by the Agency. For more information on what is required for a complete application, see 7 CFR 4284.510.

b. Purpose Eligibility

Your application must propose the establishment or continuation of a cooperative development center concept. You must use project funds, including grant and matching funds, for eligible purposes only (see 7 CFR 4284.508). In addition, project funds may also be used for programs providing for the coordination of services and sharing of information among the centers (see 7 U.S.C 1932(e)(4)(C)(vi)).

c. Project Eligibility

All project activities must be for the benefit of a rural area.

d. Multiple Applications Deemed Ineligible

Only one application can be submitted per applicant. If two applications are submitted (regardless of the applicant name) that include the same Executive Director and/or advisory boards or committees of an existing center, both applications will be determined ineligible for funding.

e. Grant Period

Your application must include no more than a one-year grant period, or it will not be considered for funding. The

grant period should begin no earlier than October 1, 2021, and no later than January 1, 2022. Applications that request funds for a grant period ending after January 1, 2023, will not be considered for funding. Projects must be completed within a one-year timeframe. Prior approval is needed from the Agency if you are awarded a grant and desire the grant period to begin earlier or later than previously approved.

The Agency may approve requests for a one-time extension of the grant period of up to 12 months at its discretion. However, you may not have more than one active RCDG during the same grant period. Further guidance on grant period extensions will be provided in the award document. The Agency understands that fiscal year 2019 or 2020 recipients may have had loss of operations due to COVID-19 and the Agency will work with them in accordance with OMB Memorandum M-20-17 and 2 CFR 200.308 to determine an acceptable grant period if they are awarded RCDG funds in fiscal year 2021.

f. Satisfactory Performance

You must be performing satisfactorily on any outstanding RCDG award to be considered eligible for a new award. Satisfactory performance includes being up-to-date on all financial and performance reports as prescribed in the grant award, and current on all tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If you have any unspent grant funds on RCDG awards prior to fiscal year 2019, your application will not be considered for funding. If your prior award(s) has unspent funds of 50 percent or more than what your approved work plan and budget projected at the time that your fiscal year 2021 application is being evaluated, your application will not be considered for funding. The Agency will verify the performance status of the applicant's prior awards and make a determination after the FY 2021 application period closes.

g. Duplication of Current Services

Your application must demonstrate that you are providing services to new customers or new services to current customers. If your work plan and budget is duplicative of your existing award, your application will not be considered for funding. If your workplan and budget is duplicative of a previous or existing RCDG and/or Socially Disadvantaged Groups Grant (SDGG) award, your application will not be considered for funding. The Agency will make this determination in its sole

discretion. Please note that the Agency only allows one active award to a grantee to ensure that there is no duplication of services. The Agency will work with FY 2019 and FY 2020 recipients who requested an extension of their award due to COVID-19 loss of operations to determine an acceptable grant period if they are awarded grant funds in fiscal year 2021 in accordance with OMB Memorandum M-20-17 and 2 CFR 200.343. Thus, requesting an extension on a previous award is not cause for deeming a FY 2021 application ineligible.

h. Indirect Costs

Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. Address To Request Application Package

For further information, you should contact your State Office at <http://www.rd.usda.gov/contact-us/state-offices>. Program materials may also be obtained at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>.

2. Content and Form of Application Submission

You must submit your application electronically through *Grants.gov*. You are encouraged, but not required to utilize the application template found at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>.

a. Electronic Submission

An optional-use Agency application template is available online at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>. To apply electronically, you must use the *Grants.gov* website at <http://www.Grants.gov>. You may not apply electronically in any way other than through *Grants.gov*.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the Catalog of Federal Domestic Assistance Number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site,

as well as the hours of operation if the system is undergoing maintenance.

To use *Grants.gov*, you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

You must submit all your application documents electronically through *Grants.gov*. Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After electronically applying through *Grants.gov*, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

b. Supplemental Information

Your application must contain all the required forms and proposal elements described in 7 CFR 4284.510 and as otherwise described in this Notice. Specifically, your application must include: The required forms as described in 7 CFR 4284.510(b) and the required proposal elements as described in 7 CFR 4284.510(c). If your application is incomplete, it is ineligible to compete for funds. Applications lacking sufficient information to determine eligibility and scoring will be considered ineligible. Information submitted after the application deadline will not be accepted.

c. Clarifications on Forms

- Your DUNS number should be identified in the "Organizational DUNS" field on Standard Form (SF) 424, "Application for Federal Assistance." You must also provide your SAM Commercial and Government Entity (CAGE) Code and expiration date under the applicant eligibility discussion in your proposal narrative. If you do not include the CAGE code and expiration date and the DUNS number in your application, it will not be considered for funding. In accordance with OMB Memorandum M-20-17, the Agency can accept an application without an active SAM registration. However, the registration must be completed before an award is made. Current registrants in SAM with active registrations expiring before July 31, 2021 will be afforded a one-time extension of 60 days.

- You no longer must complete the Form SF 424B, "Assurances—Non-Construction Programs" as a part of your application. This information is now collected through your registration or annual recertification in *SAM.gov* through the Financial Assistance

General Certifications and Representation.

- You can voluntarily fill out and submit the "Survey on Ensuring Equal Opportunity for Applicants," as part of your application if you are a nonprofit organization.

d. Clarifications on Proposal Elements

1. You must include the title of the project as well as any other relevant identifying information on the Title Page.

2. You must include a Table of Contents with page numbers for each component of the application to facilitate review.

3. Your Executive Summary must include the items in 7 CFR 4284.510(c)(3) and discuss the percentage of work that will be performed among organizational staff, consultants, or other contractors. It should not exceed two pages.

4. Your Eligibility Discussion must cover how you meet the applicant eligibility requirements, matching funds, and other eligibility requirements. It must not exceed two pages.

5. Your Proposal Narrative must not exceed 40 pages using at least 11-point font and should describe the essential aspects of the project.

- i. You are required to only have one title page for the proposal.

- ii. If you list the evaluation criteria on the Table of Contents and then specifically and individually address each criterion in narrative form, it is not necessary for you to include an Information Sheet. Otherwise, the Information Sheet is required under 7 CFR 4284.510(c)(5)(ii).

- iii. You must include the following under Goals of the Project:

- A. A statement that substantiates that the Center will effectively serve rural areas in the United States;

- B. A statement that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

- C. A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services. Expected economic impacts should be tied to tasks included in the work plan and budget; and

- D. A statement that the Center, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal government, and State and local governments.

iv. The Agency has established annual performance evaluation measures to evaluate the RCDG program. You must provide estimates on the following performance evaluation measures:

- Number of groups assisted who are not legal entities.
- Number of businesses assisted that are not cooperatives.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

It is permissible to have a zero in a performance element. When you calculate jobs created, estimates should be based upon actual jobs to be created by your organization because of the RCDG funding or actual jobs to be created by cooperative businesses or other businesses as a result of assistance from your organization. When you calculate jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive RCDG funding or actual jobs that would have been lost without assistance from your organization.

v. You can also suggest additional performance elements, for example, where job creation or jobs saved may not be a relevant indicator (*e.g.*, housing). These additional criteria should be specific, measurable performance elements that could be included in an award document.

vi. You must describe in the application how you will undertake each of the following and prefer that you describe these undertakings within the noted proposal evaluation criteria to reduce duplication in your application. The specific proposal evaluation criterion where you should address each undertaking is noted below.

A. Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector (should be presented under proposal evaluation criterion j., utilizing the specific requirements of Section E.1.j.);

B. Make arrangements for the Center's activities to be monitored and evaluated (should be addressed under proposal evaluation criterion 'h.' utilizing the specific requirements of Section E.1.h.); and

C. Provide an accounting for the money received by the grantee in

accordance with 7 CFR part 4284, subpart F and 2 CFR part 200. This should be addressed under proposal evaluation criterion 'a.', utilizing the specific requirements of Section E.1.a.

vii. You should present the Work Plan and Budget proposal element under proposal evaluation criterion 'h.', utilizing the specific requirements of Section E.1.h. of this Notice to reduce duplication in your application.

viii. You should present the Delivery of Cooperative development assistance proposal element under proposal evaluation criterion 'b', utilizing the specific requirements of Section E.1.b. of this Notice.

ix. You should present the Qualifications of Personnel proposal element under proposal evaluation criterion '', utilizing the specific requirements of Section E.1.i. of this Notice.

x. You should present the Local Support and Future Support proposal elements under proposal evaluation criterion 'j', utilizing the requirements of Section E.1.j. of this Notice.

xi. Your application will not be considered for funding if you do not address all of the proposal evaluation criteria. See Section E.1. of this Notice for a description of the proposal evaluation criteria.

xii. Only appendices A–C will be considered when evaluating your application. You must not include resumes of staff or consultants in the application.

6. You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. To satisfy the certification requirement, you should include this statement in your application: “[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property, is not delinquent on the payment of Federal income taxes, or any Federal debt, and will not use grant funds to pay any judgments obtained by the United States.” A separate signature relating to this certification is not required.

7. You must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds are pro-rated or spent in advance of grant funding, such that for every dollar of the total project cost, not less than the required amount of matching funds will be expended. Please note that this certification is a separate requirement from the Verification of Matching Funds requirement. To satisfy the certification requirement, you should include this

statement in your application: “[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds shall be pro-rated or spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will be expended.” A separate signature relating to this certification is not required.

8. You must provide documentation in your application to verify all of your proposed matching funds. The documentation must be included in Appendix A of your application and will not count towards the 40-page limitation. Template letters are available for each type of matching funds contribution at: <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>.

a. If matching funds are to be provided in cash, the following requirements must be met:

- If the matching funds are being provided by the applicant, the application must include a statement verifying (1) the amount of the cash and (2) the source of the cash. You may also provide a bank statement dated 30 days or less from the application deadline date to verify your cash match.

- If the matching funds are being provided by a third-party, the application must include a signed letter from the third party verifying (1) how much cash will be donated and (2) that it will be available corresponding to the proposed grant period or donated on a specific date within the grant period.

b. If matching funds are to be provided by an in-kind donation, you must meet the following requirements:

- If the in-kind donation is being provided by the applicant, the application must include a signed letter from you or your authorized representative verifying (1) the nature of the goods and/or services to be donated and how they will be used, (2) when the goods and/or services will be donated (*i.e.*, corresponding to the proposed grant period or to specific dates within the grant period), and (3) the value of the goods and/or services. Please note that most applicant contributions for the RCDG program are considered applicant cash match in accordance with this Notice. If you are unsure, please contact your State Office because identifying your matching funds improperly can affect your scoring.

- If the in-kind donation is being provided by a third-Party, the application must include a signed letter from the third party verifying (1) the

nature of the goods and/or services to be donated and how they will be used, (2) when the goods and/or services will be donated (*i.e.*, corresponding to the proposed grant period or to specific dates within the grant period), and (3) the value of the goods and/or services.

To ensure that you are identifying and verifying your matching funds appropriately, please note the following:

- If you are paying for goods and/or services as part of the matching funds requirement, the expenditure is considered a cash match, and you must verify it as such. Universities must verify the goods and services they are providing to the project as a cash match and the verification must be approved by the appropriate approval official (*i.e.*, sponsored programs office or equivalent).

- If you have already received cash from a third-party (*e.g.*, a foundation) before the start of your proposed grant period, you must verify this as your own cash match and not as a third-party cash match. If you are receiving cash from a third-party during the grant period, then you must verify the cash as a third-party cash match.

- Board resolutions for a cash match must be approved at the time of application.

- You can only consider goods or services for which no expenditure is made as an in-kind contribution.

- If a non-profit or another organization contributes the services of affiliated volunteers, they must follow the third-party, in-kind donation verification requirement for each individual volunteer.

- Expected program income may not be used to fulfill your matching funds requirement at the time you submit your application. However, if you have a contract to provide services in place at the time you submit your application, you can verify the amount of the contract as a cash match.

- The valuation processes used for in-kind contributions does not need to be included in your application, but you must be able to demonstrate how the valuation was derived if you are awarded a grant. The grant award may be withdrawn, or the amount of the grant reduced if you cannot demonstrate how the valuation was derived.

Successful applicants must comply with requirements identified in Section F, Federal Award Administration Information.

3. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM)

To be eligible (unless you are excepted under 2 CFR 25.110(b), (c) or (d)), you are required to:

(a) Provide a valid DUNS number in your application, which can be obtained at no cost via a toll-free request line at (866) 705-5711;

(b) Register in SAM before submitting your application. You may register in SAM at no cost at <https://www.sam.gov/SAM/>. You must provide your SAM CAGE Code and expiration date in the application materials. When registering in SAM, you must indicate you are applying for a Federal financial assistance project or program or are currently the recipient of funding under any Federal financial assistance project or program, and

(c) The SAM registration must remain active with current information at all times while RBCS is considering an application or while a Federal grant award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

If you have not fully complied with all applicable DUNS and SAM requirements, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use that determination as a basis for making an award to another applicant. In accordance with OMB Memorandum M-20-17, the Agency can accept an application without an active SAM registration. However, the registration must be completed before an award is made. Current registrants in SAM with active registrations expiring before July 31, 2021, will be afforded a one-time extension of 60 days. Please refer to Section F.2. for additional submission requirements that apply to grantees selected for this program.

4. Submission Date and Time

Explanation of Deadline: Completed applications must be submitted electronically by no later than 11:59 p.m. Eastern Time, August 10, 2021, through *Grants.gov*, to be eligible for grant funding. Please review the *Grants.gov* website at [https://](https://www.grants.gov/web/grants/register.html)

www.grants.gov/web/grants/register.html for instructions on the process of registering your organization as soon as possible to ensure that you can meet the electronic application deadline. *Grants.gov* will not accept applications submitted after the deadline.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application. See the Application Template for a full discussion of each item. For requirements of completed grant applications, refer to Section D of this document.

5. Intergovernmental Review of Applications

Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: <https://www.whitehouse.gov/wp-content/uploads/2020/04/SPOC-4-13-20.pdf>. If your State has a designated point of contact (SPOC), you may submit a copy of the application directly to the SPOC for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC, or if you do not want to submit a copy of the application to the SPOC for a review, our State Offices will submit your application to the SPOC or other appropriate agency or agencies.

6. Funding Restrictions

a. Project funds, including grant and matching funds, cannot be used for ineligible grant purposes (see 7 CFR 4284.10). Also, you shall not use project funds for the following:

- To purchase, rent, or install laboratory equipment or processing machinery;
- To pay for the operating costs of any entity receiving assistance from the Center;
- To pay costs of the project where a conflict of interest exists;
- To fund any activities prohibited by 2 CFR part 200; or
- To fund any activities considered unallowable by 2 CFR part 200, subpart

E, “Cost Principles,” and the Federal Acquisition Regulation (for-profits) or successor regulations.

b. In addition, your application will not be considered for funding if it does any of the following:

- Focuses assistance on only one cooperative or mutually-owned business;
- Requests more than the maximum grant amount; or
- Proposes ineligible costs that equal more than 10 percent of total project costs. The ineligible costs will NOT be removed at this stage to proceed with application processing. For purposes of this determination, the grant amount requested plus the matching funds amount constitutes the total project costs.

We will consider your application for funding if it includes ineligible costs of 10 percent or less of total project costs, if the remaining costs are determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs before the Agency will make the grant award, or the amount of the grant award will be reduced accordingly. If we cannot determine the percentage of ineligible costs, your application will not be considered for funding.

7. Other Submission Requirements

a. You should not submit your application in more than one format. You must submit your application electronically. Note that we cannot accept applications through mail or courier delivery, in-person delivery, email, or fax. To submit an application electronically, you must follow the instruction for this funding announcement at <http://www.grants.gov>.

b. *National Environmental Policy Act:* All recipients under this Notice are subject to the requirements of 7 CFR part 1970. However, technical assistance awards under this Notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation.

The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

c. *Civil Rights Compliance Requirements:* All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

E. Application Review Information

The State Offices will review applications to determine if they are eligible for assistance based on requirements in 7 CFR part 4284, subparts A and F, this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. Applications will be funded in rank order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency’s discretion.

1. Scoring Criteria

Scoring criteria will follow statutory criteria in 7 U.S.C. 1932(e) and the criteria published in the program regulations at 7 CFR 4284.513 as described below. You should also include information as described in Section D.2.e.5.vi. if you choose to address these items under the scoring criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual evaluation criterion. The maximum amount of points available is 110. Newly established or proposed Centers that do not yet have a track record on which to evaluate the following criteria should refer to the expertise and track records of staff or consultants expected to perform tasks related to the respective criteria. Proposed or newly established Centers must be organized well-enough at the time of application to address its capabilities for meeting these criteria.

a. *Administrative capabilities* (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated track record in carrying out activities in support of development assistance to cooperatively and mutually owned businesses. At a minimum, you must discuss the following administrative capabilities:

1. Financial systems and audit controls;
2. Personnel and program administration performance measures;
3. Clear written rules of governance; and
4. Experience administering Federal grant funding no later than the last 5 years, including but not limited to past RCDG awards. Please list the name of the Federal grant program(s), the amount(s), and the date(s) of funding received.

You will score higher on this criterion if you can demonstrate that the Center has independent governance. For applicants that are universities or parent

organizations, you should demonstrate that there is a separate board of directors for the Center.

b. *Technical assistance and other services* (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated expertise no later than the last 5 years in providing technical assistance and accomplishing effective outcomes in rural areas to promote and assist the development of cooperatively and mutually owned businesses. At a minimum, you must discuss:

1. Your potential for delivering effective technical assistance;
2. The types of assistance provided;
3. The expected effects of that assistance;
4. The sustainability of organizations receiving the assistance; and
5. The transferability of your cooperative development strategies and focus to other areas of the United States.

A chart or table showing the outcomes of your demonstrated expertise based upon the performance elements listed in Section D.2.e.5.iv. or as identified in your award document on previous RCDG awards is recommended. At a minimum, please provide information for FY 2017 to FY 2019 awards. You may also include any performance outcomes from an FY 2020 RCDG award. We prefer that you provide one chart or table for each award year. The intention here is for you to provide actual performance numbers based upon award years (fiscal year) even though your grant period for the award was implemented during the next calendar or fiscal year. Please provide a narrative explanation if you have not previously received an RCDG award.

You will score higher on this criterion if you provide more than 3 years of outcomes and can demonstrate that the organizations you assisted within the last 5 years are sustainable. Additional outcome information should be provided on RCDG grants awarded before FY 2017. Please describe specific project(s) when addressing items 1–5 of paragraph b. To reduce duplication, descriptions of specific projects and their impacts, outcomes and roles can be discussed once under criterion b or c. However, you must cross-reference the information under the other criterion.

c. *Economic development* (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated ability to facilitate:

1. Establishment of cooperatives or mutually owned businesses;
2. New cooperative approaches (*i.e.*, organizing cooperatives among underserved individuals or

communities; an innovative market approach; a type of cooperative currently not in your service area; a new cooperative structure; novel ways to raise member equity or community capitalization; conversion of an existing business to cooperative ownership); and

3. Retention of businesses, generation of employment opportunities or other factors, as applicable, that will otherwise improve the economic conditions of rural areas.

You will score higher on this criterion if you provide quantifiable economic measurements showing the impacts of your past development projects no later than the last 5 years and identify your role in the economic development outcomes.

d. Past performance in establishing legal business entities (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated past performance in establishing legal cooperative business entities and other legal business entities since October 1, 2016. Provide the name of the organization(s) established, the date(s) of formation, and your role(s) in assisting with the incorporation(s) under this criterion. In addition, documentation verifying the establishment of legal business entities must be included in Appendix C of your application and will not count against the 40-page limit for the narrative. The documentation must include proof that organizational documents were filed with the Secretary of State's Office (*i.e.*, Certificate of Incorporation or information from the State's official website naming the entity established and the date of establishment); or if the business entity is not required to register with the Secretary of State, a certification from the business entity that a legal business entity has been established and when. Please note that you are not required to submit articles of incorporation to receive points under this criterion. You will score higher on this criterion if you have established legal cooperative businesses. If your State does not incorporate cooperative business entities, please describe how the established business entity operates like a cooperative. Due to extenuating circumstances of COVID-19, the Agency will utilize information in the narrative to score this criterion. Documentation to verify past performance in establishing legal entities will be required before an award is made.

e. Networking and regional focus (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated commitment to:

1. Networking with other cooperative development centers, and other

organizations involved in rural economic development efforts, and

2. Developing multi-organization and multi-State approaches to addressing the economic development and cooperative needs of rural areas.

You will score higher on this criterion if you can demonstrate the outcomes of your multi-organizational and multi-State approaches. Please describe the project(s), partners and the outcome(s) that resulted from the approach.

f. Commitment (maximum score of 10 points). A panel of USDA employees will evaluate your commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States. You will score higher on this criterion if you define and describe the underserved and economically distressed areas within your service area, provide economic statistics, and identify past or current projects within or affecting these areas, as appropriate. Projects identified in the work plan and budget that are located in persistent poverty counties as defined in Section 736 of the Consolidated Appropriations Act, 2021, will score even higher on this criterion.

g. Matching Funds (maximum score of 10 points). A panel of USDA employees will evaluate your commitment for the 25 percent (5 percent for 1994 Institutions) matching funds requirement. A chart or table should be provided to describe all matching funds being committed to the project. However, formal documentation to verify all the matching funds must be included in Appendix A of your application. You will be scored on the total amount and how you identify your matching funds.

1. If you meet the 25 percent (5 percent for 1994 Institutions) matching funds requirement, points will be assigned as follows:

- In-kind only—1 point;
- Mix of in-kind and cash—3–4

points (maximum points will be awarded if the ratio of cash to in-kind is 30 percent or more); or

- Cash only—5 points.

2. If you exceed the 25 percent (5 percent for 1994 Institutions) matching funds requirement, points will be assigned as follows:

- In-kind only—2 points;
- Mix of in-kind and cash—6–7

points (maximum points will be awarded if the ratio of cash to in-kind is 30 percent or more); or

- Cash only—up to 10 points.

h. Work Plan/Budget (maximum score of 10 points). A panel of USDA employees will evaluate your work plan for detailed actions and an

accompanying timetable for implementing the proposal. The budget must present a breakdown of the estimated costs associated with cooperative and business development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

You must discuss at a minimum:

1. Specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds;

2. How customers will be identified;

3. Key personnel; and

4. The evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. Please provide qualitative methods of evaluation. For example, evaluation methods should go beyond quantitative measurements of completing surveys or number of evaluations.

You will score higher on this criterion if you present a clear, logical, realistic, and efficient work plan and budget.

i. Qualifications of those Performing the Tasks (maximum score of 10 points). A panel of USDA employees will evaluate your application to determine if the personnel expected to perform key tasks have experience:

1. Developing positive solutions for complex cooperative development and/or marketing problems; and

2. Conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to your success as determined by the tasks identified in the work plan.

Your application must indicate whether the personnel expected to perform the tasks are full/part-time employees of your organization or are contract personnel. You will score higher on this criterion if you demonstrate commitment and availability of qualified personnel expected to perform the tasks.

j. Local and Future Support (maximum score of 10 points). A panel of USDA employees will evaluate your application for local and future support. Support should be discussed directly within the response to this criterion.

1. Discussion of local support should include previous and/or expected local support and plans for coordinating with other developmental organizations in the proposed service area or with state and local government institutions. You will score higher if you demonstrate strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations. You may

also submit a maximum of 10 letters of support or intent to coordinate with the application to verify your discussion. These letters should be included in Appendix B of your application and will not count against the 40-page limit for the narrative. Due to the extenuating circumstances of COVID-19, the Agency will utilize information in the narrative to score this criterion. Documentation to verify local support will be required before an award is made.

2. Discussion on future support will include your vision for funding operations in future years. You should document:

- (i) New and existing funding sources that support your goals;
- (ii) Alternative funding sources that reduce reliance on Federal, State, and local grants; and
- (iii) The use of in-house personnel for providing services versus contracting out for that expertise. Please discuss your strategy for building in-house technical assistance capacity.

You will score higher if you can demonstrate that your future support will result in long-term sustainability of the Center, including the use and building of in-house personnel for providing services.

k. Administrator Discretionary Points (maximum of 10 points). The Administrator may choose to award up to 10 points to an eligible non-profit corporation or institution of higher education that has never previously been awarded an RCDG grant.

2. Review and Selection Process

The State Offices will review applications to determine if they are eligible for assistance based on requirements in 7 CFR part 4284, subparts A and F, this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. The Administrator may choose to award up to 10 Administrator priority points based on criterion (k) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the appropriations funding limitation for the RCDG program has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is evaluated, but not funded, it will not be carried forward into the competition for any subsequent fiscal year program funding. Successful applicants must comply with requirements identified in Section F,

Federal Award Administration Information.

F. Federal Award Administration Information

1. Federal Award Notices

If you are selected for funding, you will receive a signed notice of Federal award by postal or electronic mail from the State Office where your application was submitted, containing instructions and requirements necessary to proceed with execution and performance of the award. You must comply with all applicable statutes, regulations, and notice requirements before the grant award will be funded.

If you are not selected for funding, you will be notified in writing via postal or electronic mail and informed of any review and appeal rights. See 7 CFR part 11 for USDA National Appeals Division (NAD) procedures. Note that rejected applicants that are successful in their NAD appeals will not receive funding in the event that all FY 2021 RCDG program funding has already been awarded and obligated to other applicants.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subpart F; the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 200, 400, 415, 417, 418, 421; 2 CFR parts 25 and 170; and 48 CFR part 31 (subpart 31.2), and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for awards within this program:

- a. Execution of an Agency-approved Grant Agreement;
- b. Acceptance of a written Letter of Conditions; and submission of the following Agency forms:
 - Form RD 1940-1, "Request for Obligation of Funds."
 - Form RD 1942-46, "Letter of Intent to Meet Conditions."
 - SF LLL, "Disclosure of Lobbying Activities," if applicable.

3. Reporting

After grant approval and through grant completion, you will be required to provide an SF-425, "Federal Financial Report," and a project performance report on a semiannual basis (due 30 working days after end of the semiannual period). The project performance reports shall include the following:

- a. A comparison of actual accomplishments to the objectives established for that period;
- b. Reasons why established objectives were not met, if applicable;
- c. Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and
- d. Objectives and timetable established for the next reporting period.

The grantee must provide a final project and financial status report within 90 days after the expiration or termination of the grant with a summary of the project performance reports and final deliverables to closeout a grant in accordance to 2 CFR 200.344.

G. Agency Contacts

If you have questions about this Notice, please contact the appropriate State Office at <http://www.rd.usda.gov/contact-us/state-offices>. Program guidance as well as application and matching funds templates may be obtained at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>. You may also contact National Office Program Management Division: RCDG Program Lead, cpgrants@wdc.usda.gov, or call the main line at 202-720-1400. Applicants must follow the instructions for the RCDG funding announcement located at <http://www.grants.gov>.

H. Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/

parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Email*: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021-12292 Filed 6-10-21; 8:45 am]

BILLING CODE 3410-XY-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public 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 the Rhode Island State Advisory Committee to the Commission will convene a meeting on Thursday, June 24, 2021 at 3:00 p.m. (ET). The purpose of the meeting is to discuss a

potential statement by the Committee on Covid-19 and vaccinations for Black, Indigenous, and People of Color in Rhode Island.

DATES: June 24, 2021, Thursday, from 3:00 p.m.–4:00 p.m. ET.

To join by web conference: <https://bit.ly/3dHqovG>

- Password if prompted: USCCR
- If you wish to remain anonymous, please enter an alias when joining the meeting so your name does not appear in the WebEx participant list

To join by phone only, dial: 1-800-360-9505; Access Code: 199 607 1840

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg at mtrachtenberg@usccr.gov or by phone at (202) 809-9618.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. Individuals may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with conference details found through registering at the web link above. To request additional accommodations, please email mtrachtenberg@usccr.gov at least 7 days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 809-9618. Records and documents discussed during the meeting will be available for public viewing as they become available at www.facadatabase.gov. 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 Regional Programs Unit at the above phone number or email address.

Agenda

June 24, 2021, Thursday, from 3:00–4:00 p.m. (ET)

- Welcome and Roll Call
- Announcements and Updates
- Approval of Minutes from the Last Meeting

IV. Discussion: Potential Statement of Concern on Contingent Faculty

V. Public Comment

VI. Next Steps

VII. Adjournment

Dated: June 7, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-12285 Filed 6-10-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-092]

Mattresses From the People's Republic of China: Rescission of 2020 Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (Commerce) finds that the sale made by Shanghai Sunbeauty Trading Co., Ltd. (Sunbeauty) is a non-*bona fide* sale. Therefore, we are rescinding this new shipper review (NSR).

DATES: Applicable June 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Jesse Montoya, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-8211.

SUPPLEMENTARY INFORMATION:

Background

Commerce published its *Preliminary Results* in this NSR on March 1, 2021.¹ Subsequently, Sunbeauty filed a case brief on March 31, 2021² and Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (the petitioners) filed a rebuttal brief on

¹ See *Mattresses from the People's Republic of China: Preliminary Intent To Rescind the 2020 Antidumping Duty New Shipper Review*, 86 FR 11924 (March 1, 2021) (*Preliminary Results*); see also Memorandum, "Preliminary Bona Fide Sales Analysis for Shanghai Sunbeauty Trading Co., Ltd.," dated February 18, 2021.

² See Sunbeauty's Letter, "Sunbeauty's Case Brief," dated March 31, 2021.

April 9, 2021.³ No party requested a hearing in this matter.

Scope of the Order

The merchandise covered by the order are all types of youth and adult mattresses from China. The products subject to the order are currently properly classifiable under Harmonized Tariff Schedule for the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this order may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.⁴

Analysis of Comments Received

The issue discussed in the case and rebuttal briefs is addressed in the Issues and Decision Memorandum.⁵ The Issues and Decision Memorandum is a public document and is on file via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The sole issue raised in the case brief is listed in the appendix to this notice.

Rescission of the Antidumping New Shipper Review

For the reasons explained in the Issues and Decision Memorandum, Commerce continues to find that the sale made by Sunbeauty is not a *bona fide* sale for purposes of the antidumping duty law. Commerce reached this conclusion based on the totality of the evidence, including, among other things, the sales price and quantity. Because Sunbeauty made no *bona fide* sales during the period of review (POR), we are rescinding the NSR.

³ See Petitioners' Letter, "Mattress Petitioners' Rebuttal Brief," dated April 9, 2021.

⁴ See Memorandum, "Issues and Decision Memorandum for the Rescission of the 2020 Antidumping Duty New Shipper Review of Mattresses from the People's Republic of China," issued concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ *Id.*

Assessment Rates

As Commerce is rescinding this NSR, Sunbeauty's status with respect to the antidumping duty order on mattresses from the People's Republic of China (China) remains unchanged. Sunbeauty remains part of the China-wide entity and, accordingly, entries of its subject merchandise into the United States during the POR will be assessed at the China-wide rate.

Cash Deposit Requirements

Because we are rescinding this NSR, we are not determining a company-specific cash deposit rate for Sunbeauty. Sunbeauty continues to be part of the China-wide entity and is, therefore, subject to the China-wide entity cash deposit rate of 1,731.75 percent.⁶

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this rescission in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: June 7, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Sections in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Issues
- Comment: Whether Sunbeauty's Sale is *Bona Fide*
- V. Recommendation

[FR Doc. 2021-12315 Filed 6-10-21; 8:45 am]

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⁶ See *Mattresses from the People's Republic of China: Antidumping Duty Order*, 84 FR 68395 (December 16, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-899, A-821-829]

Granular Polytetrafluoroethylene Resin From India and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

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

DATES: Applicable June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry at (202) 482-0607 (India) or Jaron Moore at (202) 482-3640 (the Russian Federation (Russia)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2021, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of polytetrafluoroethylene resin from India and Russia.¹ Currently, the preliminary determinations are due no later than July 6, 2021.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

¹ See *Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations*, 86 FR 10926 (February 23, 2021).

On June 3, 2021, the petitioner² submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.³ The petitioner stated that it requests postponement so that Commerce may review the petitioner's comments on the questionnaire responses, issue supplemental questionnaires, and conduct a complete and thorough analysis in these investigations.⁴

For the reasons stated above, and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.*, 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than August 25, 2021. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations in these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 7, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-12316 Filed 6-10-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-051; C-570-052]

Certain Hardwood Plywood Products From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

SUMMARY: On May 27, 2021, the U.S. Court of International Trade (CIT)

issued its final judgment in *Fabuwood Cabinetry Corp. v. United States*, Consol. Court no. 18-00208, sustaining the Department of Commerce (Commerce)'s first remand redetermination pertaining to the scope ruling for the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment in this case is not in harmony with Commerce's scope ruling, and that Commerce is withdrawing its scope ruling because the request suffered from several critical deficiencies.

DATES: Applicable June 6, 2021.

FOR FURTHER INFORMATION CONTACT:

Kabir Archuleta, 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 September 7, 2018, Commerce found hardwood plywood in three product categories, described by the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc. (collectively, the requestors) in their Amended Scope Ruling Request,¹ to be within the scope of the *Orders*.² As a result of the *Final Scope Ruling*, Commerce instructed U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of entries of certain hardwood plywood products from China, including the plywood in the three product categories described by the requestors in their Amended Scope Ruling Request.

Fabuwood Cabinetry Corp., Cubitac Cabinetry Corp., CNC Associates, N.Y., Inc., and Ikea Supply AG appealed Commerce's *Final Scope Ruling*. On

August 19, 2020, the CIT remanded the *Final Scope Ruling* to Commerce, holding that Commerce's scope ruling failed to address: (1) The threshold question of whether the product definitions in the requestors' Amended Scope Ruling Request were specific enough to provide an adequate basis for a scope ruling, consistent with 19 CFR 351.225(c)(1); and (2) the opposing comments submitted by the interested parties with respect to the sufficiency of the accompanying supporting evidence.³ Accordingly, the CIT held that the *Final Scope Ruling* was invalid and remanded it to Commerce to further explain its acceptance of the Amended Scope Ruling Request in light of opposing comments submitted by interested parties.⁴

In its final remand redetermination issued in January 2021, Commerce revisited the record and determined that the Amended Scope Ruling Request provided a sufficiently-specific description of the products in accordance with 19 CFR 351.225(c)(1).⁵ However, in reexamining the record, Commerce determined that the Amended Scope Ruling Request, including record evidence accompanying the Initial Scope Ruling Request which remained on the record, did not meet the requirements of 19 CFR 351.225(c)(1), because it suffered from several deficiencies that must be remedied before Commerce is able to evaluate the products for which the requestors were seeking a scope ruling.⁶

Timken Notice

In its decision in *Timken*,⁷ as clarified by *Diamond Sawblades*,⁸ the Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) 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 May 27, 2021, judgment constitutes a final decision of the CIT that is not in

³ See *Fabuwood Cabinetry Corp. v. United States*, 469 F. Supp. 3d 1373, 1383-84 (CIT August 19, 2020).

⁴ *Id.*, 469 F. Supp. 3d at 1389.

⁵ See Final Results of Redetermination Pursuant to Court Remand, *Fabuwood Cabinetry Corp. v. United States*, Consol. Court No. 18-00208, Slip Op. 20-121 (CIT August 19, 2020), at 8-11, 16-18, available at <https://enforcement.trade.gov/remands/20-121.pdf>.

⁶ *Id.* at 20-28, 31-32.

⁷ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

⁸ See *Diamond Sawblades Manufactures Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2020) (*Diamond Sawblades*).

² The petitioner is Daikin America, Inc.

³ See Petitioner's Letters, "Granular Polytetrafluoroethylene Resin from India: Request to Extend Due Date for Preliminary Determination," dated June 3, 2021; and "Granular Polytetrafluoroethylene Resin from Russia: Request to Extend Due Date for Preliminary Determination," dated June 3, 2021.

⁴ *Id.*

¹ See Requestors Letters, "Certain Hardwood Plywood Products from the People's Republic of China: Request for Scope Ruling," dated April 6, 2018 (Initial Scope Ruling Request); and "Certain Hardwood Plywood Products from the People's Republic of China: Amendment to Request for Scope Ruling," dated July 13, 2018 (Amended Scope Ruling Request).

² See Memorandum, "Final Scope Ruling for Certain Hardwood Plywood Products from the People's Republic of China: Request by the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc.," dated September 7, 2018 (*Final Scope Ruling*) at 1; see also *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 82 FR 513 (January 4, 2018) (collectively, *Orders*).

harmony with Commerce's *Final Scope Ruling*. Thus, this notice is published in fulfillment of the publication requirement of *Timken*. Additionally, Commerce will continue the suspension of liquidation of hardwood plywood subject to the *Final Scope Ruling* pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

In accordance with the CIT's May 27, 2021, final judgement Commerce finds that the *Final Scope Ruling* must be withdrawn because it was based on a deficient request for a scope ruling.

Notification to CBP

In the event that the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce will notify CBP that its *Final Scope Ruling* is withdrawn and the instructions issued in accordance with that ruling are no longer applicable.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Dated: June 4, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2021-12269 Filed 6-10-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) determines that four exporters subject to this administrative review had no shipments of certain frozen warmwater shrimp (shrimp) from the People's Republic of China (China) during the period of review (POR) February 1, 2019, through January 31, 2020. We also determine that the 125 remaining companies subject to this review are part of the China-wide entity because they failed to demonstrate their eligibility for separate rates.

DATES: Applicable June 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Jasun Moy, 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) 482-8194.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2021, Commerce published the preliminary results of this administrative review.¹ We invited parties to comment on the *Preliminary Results*. No party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results*.

Scope of the Order

The products covered by this order are shrimp from China. For a complete description of the scope, see Appendix II.

Final Determination of No Shipments

Commerce preliminarily found that: (1) Allied Pacific;² (2) Shantou Red Garden Foods;³ (3) Zhangzhou Hongwei Foods Co., Ltd. (Zhangzhou Hongwei); and (4) Zhanjiang Guolian Aquatic Products Co., Ltd. (Zhanjiang Guolian) had no shipments during the POR.⁴ As

¹ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020*, 86 FR 15195 (March 22, 2021) (*Preliminary Results*).

² Allied Pacific Food (Dalian) Co., Ltd./Allied Pacific (HK) Co., Ltd./Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd./Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. comprise the single entity Allied Pacific. See *Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958, 18959 (March 28, 2013) (*Exclusion Notice*). Additionally, Allied Pacific is excluded from the order with respect to merchandise exported by Allied Pacific (HK) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd., and manufactured by Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., or Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd. See *Exclusion Notice*, 78 FR at 18959. Allied Pacific submitted a no shipment certification for exports outside the above combinations. See Allied Pacific's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of No Shipments," dated April 27, 2020.

³ Shantou Red Garden Food Processing Co., Ltd./Shantou Red Garden Foodstuff Co., Ltd. comprise the single entity Shantou Red Garden Foods. See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019*, 85 FR 83891 (December 23, 2020).

⁴ Zhanjiang Guolian is excluded from the order with respect to merchandise produced and exported by Zhanjiang Guolian. See *Notice of Amended Final*

noted in the *Preliminary Results*, we received no shipment statements from the four exporters identified above, and the statements were consistent with the information we received from U.S. Customs and Border Protection (CBP).

No party commented on our preliminary no-shipment findings with respect to Allied Pacific, Shantou Red Garden Foods, Zhangzhou Hongwei, and Zhanjiang Guolian. Therefore, for these final results, we continue to find that these four exporters had no shipments of subject merchandise to the United States during the POR.

China-Wide Entity

With the exception of Allied Pacific, Shantou Red Garden Foods, Zhangzhou Hongwei, and Zhanjiang Guolian, we find all other companies for which a review was requested to be part of the China-wide entity because they failed to file no-shipment statements, separate rate applications, or separate rate certifications. Accordingly, the companies listed in Appendix I are part of the China-wide entity.

Because no party requested a review of the China-wide entity, and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, we did not conduct a review of the China-wide entity. The rate previously established for the China-wide entity is 112.81 percent and is not subject to change as a result of this review.⁵

Assessment Rates

We have not calculated any assessment rates in this administrative review. Based on record evidence, we have determined that Allied Pacific, Shantou Red Garden Foods, Zhangzhou Hongwei, and Zhanjiang Guolian had no shipments of subject merchandise, and, therefore, pursuant to Commerce's assessment practice, any suspended entries entered under their case numbers will be liquidated at the China-wide entity rate.⁶

Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China, 70 FR 5149, 5152 (February 1, 2005). Zhanjiang Guolian submitted a no shipment certification for exports outside the above combination. See Zhanjiang Guolian's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of No Shipments," dated May 15, 2020.

⁵ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China*, 70 FR 5149 (February 1, 2005).

⁶ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

For all remaining companies subject to this review, which are part of the China-wide entity, we will instruct CBP to liquidate their entries at the current rate for the China-wide entity (*i.e.*, 112.81 percent). Consistent with its recent notice,⁷ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, and which were not assigned the China-wide rate in this review, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently-completed period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (including the companies listed in Appendix I), the cash deposit rate will be that for the China-wide entity (*i.e.*, 112.81 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in

Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h).

Dated: June 7, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Companies Determined To Be Part of the China-Wide Entity

1. Anhui Fuhuang Sungem Foodstuff Group Co., Ltd
2. Asian Seafoods (Zhanjiang) Co., Ltd.
3. Beihai Anbang Seafood Co., Ltd.
4. Beihai Boston Frozen Food Co., Ltd.
5. Beihai Tianwei Aquatic Food Co. Ltd.
6. Changli Luquan Aquatic Products Co., Ltd.
7. Chengda Development Co. Ltd.
8. Dalian Beauty Seafood Company Ltd.
9. Dalian Changfeng Food Co., Ltd.
10. Dalian Guofu Aquatic Products and Food Co., Ltd.
11. Dalian Haiqing Food Co., Ltd.
12. Dalian Hengtai Foods Co., Ltd.
13. Dalian Home Sea International Trading Co., Ltd.
14. Dalian Philica International Trade Co., Ltd.
15. Dalian Philica Supply Chain Management Co., Ltd.
16. Dalian Rich Enterprise Group Co., Ltd.
17. Dalian Shanhai Seafood Co., Ltd.
18. Dalian Sunrise Foodstuffs Co., Ltd.
19. Dalian Taiyang Aquatic Products Co., Ltd.
20. Dandong Taihong Foodstuff Co., Ltd.
21. Dongwei Aquatic Products (Zhangzhou) Co., Ltd.
22. Ferrero Food
23. Food Processing Co., Ltd.
24. Fujian Chaohui Aquatic Food Co., Ltd.
25. Fujian Chaohui Group
26. Fujian Chaohui International Trading Co., Ltd.
27. Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.
28. Fujian Dongwei Food Co., Ltd.
29. Fujian Dongya Aquatic Products Co., Ltd.
30. Fujian Fuding Seagull Fishing Food Co., Ltd.
31. Fujian Hainason Trading Co., Ltd.
32. Fujian Haohui Import & Export Co., Ltd.
33. Fujian Hongao Trade Development Co.
34. Fujian R & J Group Ltd.
35. Fujian Rongjiang Import and Export Co., Ltd.
36. Fujian Zhaoan Haili Aquatic Co., Ltd.
37. Fuqing Chaohui Aquatic Food Co., Ltd.
38. Fuqing Dongwei Aquatic Products Industry Co., Ltd.
39. Fuqing Longhua Aquatic Food Co., Ltd.
40. Fuqing Minhua Trade Co., Ltd.
41. Fuqing Yihua Aquatic Food Co., Ltd.
42. Gallant Ocean Group
43. Guangdong Foodstuffs Import & Export (Group) Corporation
44. Guangdong Gourmet Aquatic Products Co., Ltd.
45. Guangdong Jinhang Foods Co., Ltd.
46. Guangdong Rainbow Aquatic Development
47. Guangdong Shunxin Marine Fishery Group Co., Ltd.
48. Guangdong Taizhou Import & Export Trade Co., Ltd.
49. Guangdong Universal Aquatic Food Co. Ltd.
50. Guangdong Wanshida Holding Corp.
51. Guangdong Wanya Foods Pty. Co., Ltd.
52. Haili Aquatic Product Co., Ltd.
53. Hainan Brich Aquatic Products Co., Ltd.
54. Hainan Golden Spring Foods Co., Ltd.
55. Hainan Qinfu Foods Co., Ltd.
56. Hainan Xintaisheng Industry Co., Ltd.
57. Huazhou Xinhai Aquatic Products Co. Ltd.
58. Kuehne Nagel Ltd. Xiamen Branch
59. Leizhou Bei Bu Wan Sea Products Co., Ltd.
60. Longhai Gelin Foods Co., Ltd.
61. Maoming Xinzhou Seafood Co., Ltd.
62. New Continent Foods Co., Ltd.
63. Ningbo Prolar Global Co., Ltd.
64. North Seafood Group Co.
65. Pacific Andes Food Ltd.
66. Penglai Huiyang Foodstuff Co., Ltd.
67. Penglai Yuming Foodstuff Co., Ltd.
68. Qingdao Free Trade Zone Sentaida
69. Qingdao Fusheng Foodstuffs Co., Ltd.
70. Qingdao Yihexing Foods Co., Ltd.
71. Qingdao Yize Food Co., Ltd.
72. Qingdao Zhongfu International
73. Qinhuangdao Gangwan Aquatic Products Co., Ltd.
74. Rizhao Meijia Aquatic Foodstuff Co., Ltd.
75. Rizhao Meijia Keyuan Foods Co. Ltd.
76. Rizhao Rongxing Co. Ltd.
77. Rizhao Smart Foods Company Limited
78. Rongcheng Yin Hai Aquatic Product Co., Ltd.
79. Rushan Chunjiangyuan Foodstuffs Co., Ltd.
80. Rushan Hengbo Aquatic Products Co., Ltd.
81. Savvy Seafood Inc.
82. Sea Trade International Inc.
83. Shanghai Zhoulian Foods Co., Ltd.
84. Shantou Freezing Aquatic Product Foodstuffs Co.
85. Shantou Haili Aquatic Product Co. Ltd.
86. Shantou Haimao Foodstuff Factory Co., Ltd.
87. Shantou Jiazhong Food Industrial Co., Ltd.
88. Shantou Jintai Aquatic Product Industrial Co., Ltd.
89. Shantou Longsheng Aquatic Product

⁷ See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings, 86 FR 3995 (January 15, 2021).

- Foodstuff Co., Ltd.
 90. Shantou Ocean Best Seafood Corporation
 91. Shantou Ruiyuan Industry Co., Ltd.
 92. Shantou Wanya Foods Fty. Co., Ltd.
 93. Shantou Yuexing Enterprise Company
 94. Shengyuan Aquatic Food Co., Ltd.
 95. Suizhong Tieshan Food Co., Ltd.
 96. Thai Royal Frozen Food Zhanjiang Co., Ltd.
 97. Tongwei Hainan Aquatic Products Co., Ltd.
 98. Xiamen East Ocean Foods Co., Ltd.
 99. Xiamen Granda Import and Export Co., Ltd.
 100. Yangjiang Dawu Aquatic Products Co., Ltd.
 101. Yangjiang Guolian Seafood Co., Ltd.
 102. Yangjiang Haina Datong Trading Co.
 103. Yantai Longda Foodstuffs Co., Ltd.
 104. Yantai Tedfoods Co., Ltd.
 105. Yantai Wei Cheng Food Co., Ltd.
 106. Yantai Wei-Cheng Food Co., Ltd.
 107. Yixing Magnolia Garment Co., Ltd.
 108. Zhangzhou Donghao Seafoods Co., Ltd.
 109. Zhangzhou Xinhui Foods Co., Ltd.
 110. Zhangzhou Xinwanya Aquatic Product Co., Ltd.
 111. Zhangzhou Yanfeng Aquatic Product & Foodstuff Co., Ltd.
 112. Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.
 113. Zhanjiang Fuchang Aquatic Products Co., Ltd.
 114. Zhanjiang Fuchang Aquatic Products Freezing Plant
 115. Zhanjiang Longwei Aquatic Products Industry Co., Ltd.
 116. Zhanjiang Newpro Foods Co., Ltd.
 117. Zhanjiang Regal Integrated Marine Resources Co., Ltd.
 118. Zhanjiang Universal Seafood Corp.
 119. Zhaoan Yangli Aquatic Co., Ltd.
 120. Zhejiang Evernew Seafood Co.
 121. Zhejiang Xinwang Foodstuffs Co., Ltd.
 122. Zhoushan Genho Food Co., Ltd.
 123. Zhoushan Green Food Co., Ltd.
 124. Zhoushan Haizhou Aquatic Products
 125. Zhuanghe Yongchun Marine Products

Appendix II

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild caught (ocean harvested) or farm raised (produced by aquaculture), head on or head off, shell on or peeled, tail on or tail off,⁸ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the harmonized tariff schedule (HTS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus*

vannemei), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of this order is dispositive.⁹

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⁹ On April 26, 2011, Commerce amended the order to include dusted shrimp, pursuant to the CIT decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (ITC) determination, which found the domestic like product to include dusted shrimp. See *Certain Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand,*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People’s Republic of China: Continuation of Antidumping Duty Order

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) order on barium chloride from the People’s Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia, Office V, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1984, Commerce issued the AD order on barium chloride from China.¹ On October 1, 2020, the ITC instituted,² and Commerce initiated,³ the fifth sunset review of the Order, pursuant to section 751(c) of the Tariff Act of 1930 as amended (the Act). As a result of its review, Commerce determined that a revocation of the Order would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the Order be revoked.⁴

On June 7, 2021, the ITC published its determination, pursuant to sections

and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011).

¹ See *Antidumping Duty Order; Barium Chloride from the People’s Republic of China*, 49 FR 40635 (October 17, 1984) (Order).

² See *Barium Chloride from China; Institution of a Five-Year Review*, 85 FR 61984 (October 1, 2020).

³ See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 61928 (October 1, 2020).

⁴ See *Barium Chloride from the People’s Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order*, 86 FR 7257 (January 27, 2021).

⁸ “Tails” in this context means the tail fan, which includes the telson and the uropods.

751(c) and 752(a) of the Act, that revocation of the *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 Order

The merchandise covered by the *Order* is barium chloride, a chemical compound having the formulas BaCl₂ or BaCl₂·2H₂O, currently classifiable under subheading 2827.39.4500 of the Harmonized Tariff Schedule of the United States (HTSUS).⁶ Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or a recurrence of dumping, 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 *Order*.

U.S. Customs and Border Protection will continue to collect AD 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 *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 sunset review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 7, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–12314 Filed 6–10–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A 533–810]

Stainless Steel Bar From India: Notice of Court Decision Not in Harmony With the Results of the Antidumping Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On June 2, 2021, the U.S. Court of International Trade (the CIT) issued its final judgment in *Carpenter Technology Corporation, et al. v. United States*, Court No. 19–00200, sustaining the Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on stainless steel bar (SSB) from India covering the period February 1, 2017 through January 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margins assigned to Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals, Sieves Manufacturers (India) Pvt. Ltd., and Hindustan Inox Ltd. (collectively, the Venus Group), Jindal Stainless (Hisar) Limited (Jindal), and Laxcon Steels Limited (Laxcon).

DATES: Applicable June 12, 2021.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2019, Commerce published its *Final Results* in the 2017–2018 AD administrative review of SSB from India.¹ In the *Final Results*, we determined that the Venus Group is not the manufacturer of the SSB that it purchased from unaffiliated suppliers and processed in India prior to exportation to the United States.² Because most of the unaffiliated suppliers did not provide their costs, we applied partial adverse facts available

(AFA) with respect to the Venus Group.³

The petitioners⁴ appealed Commerce's *Final Results*.⁵ On August 4, 2020, Commerce requested a voluntary remand to reconsider or further explain the application of its partial AFA methodology to address missing cost of production data from the Venus Group's unaffiliated suppliers, the change in the partial AFA methodology between the *Preliminary Results*⁶ and the *Final Results*, and, if appropriate, to reconsider the appropriate AD rates assigned to Jindal and Laxcon.⁷

On November 4, 2020, the CIT granted Commerce's motion for a voluntary remand finding that there was a compelling justification for the remand request, that the need to accurately calculate margins was not outweighed by the interest in finality, and that the scope of the requested remand was appropriate.⁸ Specifically, the CIT remanded the *Final Results* to Commerce to further explain or reconsider its partial AFA methodology in the *Final Results*.⁹

In its Remand Redetermination, issued in January 2021,¹⁰ Commerce further explained its revised partial AFA methodology, and made certain corrections in the Venus Group's margin program. Specifically, Commerce included all of the Venus Group's U.S. sales in its margin calculation; matched sales and costs by manufacturer; and made AFA adjustments not only to cost of production, but also other components of cost, including variable cost of manufacture and fixed and variable overhead.¹¹ Accordingly, Commerce made changes to the margin

³ *Id.*

⁴ The petitioners are: Carpenter Technology Corporation; Crucible Industries LLC; Electralloy, a Division of G.O. Carlson, Inc.; North American Stainless; Universal Stainless Alloy Product, Inc.; and Valbruna Slater Stainless, Inc.

⁵ See Plaintiff's Rule 56.2 Motion for Judgment upon the Agency Record, in *Carpenter Technology Corporation, et al. v. United States*, Court No. 19–00200 (filed May 5, 2020).

⁶ See *Stainless Steel Bar from India: Preliminary Results of the Antidumping Duty Administrative Review; 2017–2018*, 84 FR 15582 (April 16, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

⁷ See Government's Response to Plaintiffs' Motion for Judgment upon the Agency Record, in *Carpenter Technology Corporation, et al. v. United States*, Court No. 19–00200 (filed August 4, 2020).

⁸ See *Carpenter Technology Corporation, et al. v. United States*, 477 F. Supp. 3d 1356 (CIT 2020).

⁹ *Id.*

¹⁰ See Results of Redetermination Pursuant to Court Remand, *Carpenter Technology Corporation, et al. v. United States*, Court No. 19–00200, Slip Op. 20–158, dated January 27, 2021 (Remand Redetermination).

¹¹ *Id.* at 6 through 11.

⁵ See *Barium Chloride from China*, 86 FR 30332 (June 7, 2021).

⁶ The scope reflects the HTSUS subheading currently in effect.

¹ See *Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017–2018*, 84 FR 56179 (October 21, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Final Results* IDM at Comment 1.

calculations for the Venus Group.¹² Commerce also made changes to the rates assigned to Jindal and Laxcon.¹³ The CIT sustained Commerce's Remand Redetermination and also denied a motion to intervene that was filed by Laxcon.¹⁴

Timken Notice

In its decision in *Timken*,¹⁵ as clarified by *Diamond Sawblades*,¹⁶ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's June 2, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending the *Final Results* with respect to Venus Group, Jindal, and Laxcon as follows:¹⁷

Producer/exporter	Weighted-average dumping margin (percent)
Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals, Sieves Manufacturers (India) Pvt. Ltd., and Hindustan Inox Ltd	24.60
Jindal Stainless (Hisar) Limited ..	92.10
Laxcon Steels Limited	24.60

Cash Deposit Rates

Because the Venus Group has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit

instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate for Venus Group. For Jindal and Laxcon, which do not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to CBP.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT order from liquidating entries that: Were produced and/or exported by the Venus Group, Jindal, or Laxcon, and were entered, or withdrawn from warehouse, for consumption during the period February 1, 2017, through January 31, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

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 CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by the Venus Group, Jindal, or Laxcon in accordance with 19 CFR 351.212(b). We will instruct CBP to apply the *ad valorem* assessment rates listed above to all entries of subject merchandise during the period of review which were produced and/or exported by Jindal and Laxcon. For the Venus Group, we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,¹⁸ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries of subject merchandise during the period of review produced by the Venus Group for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: June 7, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-12313 Filed 6-10-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with April anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable June 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with April anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at <https://access.trade.gov>, in accordance with 19 CFR 351.303.¹ Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).

¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

¹² *Id.*

¹³ Jindal's total AFA rate was based on one of the Venus Group's highest transaction-specific margins. Because Commerce made changes to the computer programs for the Venus Group, this resulted in a change to the highest transaction-specific rate calculated for the Venus Group, which was assigned as the revised total AFA rate for Jindal. Laxcon, as a non-selected respondent, received the Venus Group's revised rate on remand. See Remand Redetermination at 11-13.

¹⁴ See *Carpenter Technology Corporation, et al. v. United States*, Court No. 19-00200, Slip Op. 21-68 (June 2, 2021).

¹⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁶ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁷ See Final Remand Redetermination at 11-12.

¹⁸ See 19 CFR 351.106(c)(2).

Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be "collapsed" (e.g., treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (e.g., investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and

(b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.² Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to

consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at <https://enforcement.trade.gov/nme/nme-sep-rate.html> on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 35 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers

² See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding³ should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,⁴ should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on

Commerce's website at <https://enforcement.trade.gov/nme/nme-sep-rate.html> on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 35 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be

considered for respondent selection. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than April 30, 2022.

	Period to be reviewed
AD Proceedings	
ARGENTINA: Biodiesel, A–357–820	4/1/20–3/31/21
Aceitera General Deheza S.A.	
Bio Nogoya S.A.	
Bunge Argentina S.A.	
Cargill S.A.C.I.	
COFCO Argentina S.A.	
Cámara Argentina de Biocombustibles	
Explora	
GEFCO Argentina	
LDC Argentina S.A.	
Molinos Agro S.A.	
Noble Argentina	
Oleaginoso Moreno Hermanos S.A.	
Patagonia Bioenergía	
Renova S.A.	
T6 Industrial SA (EcoFuel)	
Unitec Bio S.A.	
Vicentin S.A.I.C.	
Viluco S.A.	
INDIA: Carbon and Alloy Steel Threaded Rod, A–533–887	9/25/19–3/31/21
A H Enterprises	
A S International	
Aadi Shree Fastener Industries	
Aanjaney Micro Engy Pvt., Ltd.	
Aaran 1 Engineering Pvt., Ltd.	
Aask Precision Engineers	
Abhi Metals	
Accumax Lab Devices Pvt., Ltd.	
Acmi Industries	
Adhi Automation (India) Pvt., Ltd.	
Adma Auto Components Pvt., Ltd.	
Adma Fabrications (P) Ltd.	
Aesthetic Living Merchants Pvt., Ltd.	
Agarwal Fastners Pvt., Ltd.	
Ajay Electric And Metal Industries	
Akg India Private Ltd.	
Ambana Exp.	
Amtek Auto Ltd.	
Ap Trading	
Apa Engineering Pvt., Ltd.	
Arcotherm Pvt., Ltd.	
Arohi International	
Aruna Alloy Steels Pvt., Ltd.	
Ashish International	

³ Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (e.g., an ongoing administrative review, new

shipper review, etc.) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

⁴ Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Asma International Asp Pvt., Ltd. August Industries Aura Industries Equipement & Project Pvt. Ltd. Avtar Exp. Babu Exp. Bajaj Auto Ltd. Balmer Lawrie & Co., Ltd. Bansal Wire Industries Ltd. Bee Dee Cycle Industries Belgaum Ferrocast India Pvt., Ltd. Beri Udyog Pvt., Ltd. Best Quality Fastners Bhansali Inc. Bhuj Polymers Pvt., Ltd. C Tech Engineers Pvt. Ltd. Caliber Enterprises Canco Fasteners Caparo Engineering India Pvt., Ltd. Capital Bolts And Hardware Case New Holland Construction Equipment(l) Pvt. Ltd. Century Distribution System Inc. Challenger Sweepers Private Ltd. Chandra Mats Pvt., Ltd. Charu Enterprises Chhabra Forgings Chirag International Clasquin India Pvt., Ltd. Cnh Industries (India) Pvt., Ltd. Collection Exp. Concept Fasteners Conex Metals Continental Hardware Mart Cosmo International Cummins India Ltd. Cummins India Ltd. Pdc Mfg Unit Damco India Pvt., Ltd. Danesh Industries Danta Exim Dauji Engineering Ltd. Dcw Ltd. Deepak Brass Industries Deepak Fasteners Ltd. Deneb Dhara Foods Pvt., Ltd. Dmw Cnc Solutions India Pvt., Ltd. Dst Industries Durable Metalcraft Eagle Line Fixings&Fixtures(P) Ltd. Eastman Industries Ltd. Echjay Forgings Pvt. L Edicon Pneumatic Tool Co. Pvt. Ltd. Efficient Automotives Pvt., Ltd. Eicher Motors Ltd. Elite Green Pvt., Ltd. Ellias International Emmforce Inc. Emu Lines Pvt., Ltd. Ess Enn Auto Cnc .P. Ltd. Everest Engineering Equipment Pvt., Ltd. Everest Industries Ltd. Fence Fixings Fine Products (India) Fine Thread Form Industries Fit Right Nuts And Bolts Pvt., Ltd. Flowserve India Controls Pvt., Ltd. Ford India Pvt., Ltd. Ganesh Brass Industries Ganga Technocast Ganges Internationale Ganpati Fastners Pvt., Ltd. Gayatri Metal Products Ghanshyamlal Co. Global Engineering Exports	

	Period to be reviewed
Gloster Jute Mills Limited Goel & Goel International Good Ways Corporation Goodgood Manufacturers GPDA Fasteners Gripwel Fasteners Gvn Fuels Ltd. Hamidi Exp. Haria Trading Co. Him Overseas Hind Metal & Industries Pvt., Ltd. Hindustan Expo Hiten Fastners Pvt., Ltd. Hobb International Pvt., Ltd. Humboldt Wedag India P Ltd. Husco Hydraulics Pvt., Ltd. Idea Fastners Pvt., Ltd. Imco Alloys Pvt., Ltd. Inder Industries India Yamaha Motor Pvt., Ltd. Teyamaha Motor Asia Pte., Ltd. Indo Schottle Auto Parts Pvt., Ltd. Indra Engineering Induspro Auto Engineers Pvt., Ltd. Industrias Gol S.A.U. Ingersoll Rand India Ltd. Intex Home Solutions Intl Tractors Ltd. Irm Offshore & Marine Engineer Pvt., Ltd. Ispt India Pvt., Ltd. J.K. Fenner (India) Ltd. Jain Grani Marmo Pvt., Ltd. Jayson International Jhv Engicon Pvt., Ltd. Jindal Fasteners K V Tech India LLP Kalpana Brass Industries Kanika Exp. Kanika Overseas Inc. Kapil Enterprises Kapsen India Kapurthala Industrial Corporation Karamtara Engineering Pvt., Ltd. Karna International KBV Industries India Pvt., Ltd. KEC International Ltd. Keith Ceramic India Private Ltd. Kewaunee Labway India Pvt., Ltd. King Exports Kmp Freight Knk Enterprises Knl Drive Line Parts Pvt., Ltd. Kohler India Corp.Pvt Ltd. Krisam Automation Pvt., Ltd. KSP Engineering Co. Kumar Auto Parts Pvt., Ltd. Kundan Industries Ltd. Lasercut Metal Technology Private Ltd. LCL Logistix (I) Pvt., Ltd. Lg Balakrishnan & Bros Ltd. Live Rock Bangalore Pvt., Ltd. M K Fastners M.D. Industries M.K.Fasteners M.M. Intl Mack Machine Products Pvt., Ltd. Maharaja International Maini Precision Products Ltd. Mangal Steel Enterprises Limited Mangalam Alloys Ltd. Mansons International Pvt., Ltd. Mark Industries Marudhar Enterprises Maxop Engineering Co.	

	Period to be reviewed
Maya Enterprises MB Metallic Bellows Pvt., Ltd. Mechasoft Meeras International Mega Engineers Metaloft Industries Private Ltd. Metrix Autocomp Pvt., Ltd. Mohindra Fasteners Ltd. Movex Cargo Pvt., Ltd. MSS India Pvt., Ltd. (100%Eou) Mukund Overseas Multimech Engineers Multitech Products Pvt., Ltd. N. A. Roto Machines & Moulds India Navketan Engineering Works Neon Alloys Nexo Industries Ltd. Nipha Enterprises LLP Niranjan Engineering Works Nishant Steel Industries Nivic Technocast Norquest Brands Private Ltd. Northpole Industries Omni Forge Pvt., Ltd. Omnitech Engineering Onkar International Oriental Exp. Corporation Oriental Rubber Industries P N International P R Rolling Mills Pvt., Ltd. Paani Precision Products LLP Paloma Turning Co. Pvt., Ltd. Panesar Engineers Pankaj Exp. Paramount Agriparts Parshva India Parul Exp. Perfect Forgings Perfect Industries (India) Pheon Auto Tech Pvt., Ltd. Piping & Energy Products (P) Ltd Pooja Forge Ltd. Pooja Precision Screws Pvt., Ltd. Pr Professional Services Precision Engineering Industries Precision Products Marketing Pvt., Ltd. Prime Steel Products Protech International Psl Pipe & Fittings Co. R F India R K Fasteners (India) R. Kay Exp. Raajratna Metal Industries Ltd. Raajratna Ventures Ltd. Rachna Fastners Randack Fasteners India Pvt., Ltd. Rar Exim Pvt., Ltd. Ravi Engineers Rbm International Resilent Autocomp Pvt., Ltd. Ridvan Fasteners India Pvt., Ltd. Right Tight Fastners Pvt., Ltd. Rishi International Rohlig India Pvt., Ltd. Roots Multiclean Ltd. Rotzler Services Private Ltd. S K Brass Works Sakthi Forgings Sameer Exports International Sandip Brass Industries Sanghvi Metal Coporation Sarveshwari Engineers Satyam Engineering Works Schenker India Pvt., Ltd.	

	Period to be reviewed
Scorpio Precisions Shalaka Shafts Private Ltd. Shiv Om Brass Industries Shree Exp. Shree Luxmi Fasteners Shree Raj Industries Shreeraj Industries Shri L.G. Hindustan Handicrafts Shri Ram Castings Shri Shirdi Sai Baba Moorti Art Shrijee Process Engineering Shrutee Exp. Pvt., Ltd. Shyam Enterprises Sigmaflow Production Solutions Priv Simplex Engineering Co. Singhania International Sivaramakrishna Forgings P. Ltd. Skf India Ltd. Sks Fasteners Ltd. Sonesta Corporation Sri Ranganathar Industries Private Limited Stelco Ltd. Sterling Tools Ltd. Strut Support Systems Sundram Fasteners Ltd. Sunil Chirag & Co. Sunil Industries, Ltd. Supreme Overseas Exports India Pvt. Ltd. Surelock Plastics Pvt., Ltd. Suzlon Energy Ltd. Suzy Industries Ltd. Sv Engineerings Swadesh Engineering Industries Swamiji Transmission Pvt., Ltd. Swati Enterprise Techbolt Industries Private Ltd. Technical Products Technocraft Industries (India) Ltd. Tega Industries Ltd. Teryair Equipment Pvt., Ltd. Texas Technology Tijiya Engineering Pvt., Ltd. Tijiya Exp. Pvt., Ltd. Torqbolt Inc. Total Transport Systems Pvt., Ltd. Trans Tool Pvt., Ltd. Tristar International Triton Foodworks Pvt., Ltd. Trueform Exp. Pvt.L Turbo Tools Pvt., Ltd. Umaa Engineers Unexo Life Sciences Private Ltd. Universal Precision Screws Unlimited Inc. UT Worldwide (India) Pvt., Ltd. V.K Fasteners Pvt., Ltd. V.R.Logistics Pvt., Ltd. V.S.Industries Vatsalya Metal Industries Vega Industries Velvin Paper Products Venu Engineering Services (P) Ltd. Versatile Instruments & Controls Vestas Wind Technology India Private Ltd. Vibracoustic Noida Pvt., Ltd. Victaulic Piping Products India Pvt., Ltd. Vidhi Industries Vidushi Wires Pvt., Ltd. Vijay Engineering Works Viraj Profiles Ltd. Vollan Shipping Pvt., Ltd. Vph International Waveerk Enterprises White Mountain Fixings India	

	Period to be reviewed
Wintage Engineers & Consultants Wire Rings Xcel Exports Yerik International Yogendra International Youyun Logistics & Technology Pvt. Ltd. Zenith Precision Pvt., Ltd.	
INDONESIA: Biodiesel, A-560-830	4/1/20-3/31/21
PT Cermerlang Energi Perkasa (CEP)	
PT Ciliandra Perkasa	
PT Musim Mas, Medan	
PT Pelita Agung Agrindustri	
Wilmar International Ltd.	
THAILAND: Certain Frozen Warmwater Shrimp, ⁵ A-549-822	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: 1,1,1,2-Tetrafluoroethane (R-134a), A-570-044	4/1/20-3/31/21
Puremann, Inc.	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions, ⁶ A-570-967	5/1/19-4/30/20
Kingtom Alumínio S.R.L.	
THE PEOPLE'S REPUBLIC OF CHINA: Alloy and Certain Carbon Steel Threaded Rod, A-570-104	9/25/19-3/31/21
Ningbo Dingtuo Imp. & Exp. Co., Ltd.	
Ningbo Dongxin High-Strength Nut Co., Ltd.	
Ningbo Jinding Fastening Piece Co., Ltd.	
Ningbo Zhongjiang High Strength Bolts Co., Ltd.	
Zhejiang Junyue Standard Part Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Activated Carbon, A-570-904	4/1/20-3/31/21
Beijing Pacific Activated Carbon Products Co., Ltd.	
Carbon Activated Tianjin Co., Ltd.	
Datong Juqiang Activated Carbon Co., Ltd.	
Datong Municipal Yunguang Activated Carbon Co., Ltd.	
Jacobi Carbons AB/Tianjin Jacobi International Trade Co., Ltd./Jacobi Carbons Industry (Tianjin) Co., Ltd. ⁷	
Jilin Bright Future Chemicals Co.	
Meadwestvaco Trading (Shanghai)	
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.	
Ningxia Huahui Activated Carbon Co., Ltd.	
Ningxia Mineral & Chemical Limited	
Ningxia Mineral & Chemical Ltd.	
Shanxi Dapu International Trade Co., Ltd.	
Shanxi DMD Corp.	
Shanxi Industry Technology Trading Co., Ltd.	
Shanxi Sincere Industrial Co., Ltd.	
Shanxi Tianxi Purification Filter Co., Ltd.	
Sinoacarbon International Trading Co., Ltd.	
Tancarb Activated Carbon Co., Ltd.	
Tianjin Channel Filters Co., Ltd.	
Tianjin Maijin Industries Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Aluminum Foil, A-570-053	4/1/20-3/31/21
Anhui Maximum Aluminium Industries Company Ltd.	
Aлча International Holdings Limited.	
Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.	
Granges Aluminum (Shanghai) Co., Ltd.	
Hangzhou Dingsheng Import & Export Co. Ltd.	
Hangzhou Five Star Aluminum Co., Ltd.	
Hunan Suntown Marketing Limited	
Jiangsu Alcha Aluminium Co., Ltd.	
Jiangsu Huafeng Aluminum Industry Co., Ltd.	
Jiangsu Zhongji Lamination Materials Co., Ltd. (f/k/a/Jiangsu Zhongji Lamination Materials Stock Co., Ltd.)	
Jiangsu Zhongji Lamination Materials Co., (HK) Limited	
Shanghai Huafo Aluminum Corporation (formerly Huafo Nikkei Aluminum Corporation)	
SNTO International Trade Limited	
Suntown Technology Group Corporation Limited	
Xiamen Xiashun Aluminium Foil Co., Ltd.	
Yinbang Clad Material Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Drawn Stainless Steel Sinks, A-570-983	4/1/20-3/31/21
B&R Industries Limited	
Feidong Import and Export Co., Ltd.	
Foshan Shunde MingHao Kitchen Utensils Co., Ltd.	
Foshan Zhaoshun Trade Co., Ltd.	
Franke Asia Sourcing Ltd.	
Grand Hill Work Company	
Guangdong Dongyuan Kitchenware Industrial Co., Ltd.	
Guangdong G-Top Import & Export Co., Ltd.	
Guangdong New Shichu Import & Export Company Limited	
Guangdong Yingao Kitchen Utensils Co., Ltd.	
Hangzhou Heng's Industries Co., Ltd.	

	Period to be reviewed
Hubei Foshan Success Imp & Exp Co., Ltd. J&C Industries Enterprise Limited Jiangmen Hongmao Trading Co., Ltd. Jiangmen New Star Hi-Tech Enterprise Ltd. Jiangmen Pioneer Import & Export Co., Ltd. Jiangxi Zoje Kitchen & Bath Industry Co., Ltd. KaiPing Dawn Plumbing Products, Inc. Ningbo Afa Kitchen and Bath Co., Ltd./Yuyao Afa Kitchenware Co., Ltd. Ningbo Oulin Kitchen Utensils Co., Ltd. Primy Cooperation Limited Shenzhen Kehuaxing Industrial Ltd. Shunde Foodstuffs Import & Export Company Limited of Guangdong Shunde Native Produce Import and Export Co., Ltd. of Guangdong Xinhe Stainless Steel Products Co., Ltd. Zhongshan Newecan Enterprise Development Corporation Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong Zhongshan Superte Kitchenware Co., Ltd. Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Magnesium Metal, A-570-896	4/1/20-3/31/21
Tianjin Magnesium International Co., Ltd. Tianjin Magnesium Metal Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Stainless Steel Sheet and Strip, A-570-042	4/1/20-3/31/21
Ahonest Changjiang Stainless Co., Ltd. Angang Guangzhou Stainless Steel Corporation Angang Hanyang Stainless Steel Corp. Anping Yuanjing Metal Products Co., Ltd. Apex Industries Corporation Baofeng Xianlong Stainless Steel (Baofeng Steel Group Co.) Baojing Steel Ltd. Baosteel Desheng Stainless Steel Co., Ltd. Baosteel Stainless Steel Co., Ltd. Baotou Huayong Stainless Steel Co., Ltd. Beihai Chengde Ferronickel Stainless Steel Beijing Dayang Metal Industry Co. Beijing Hengsheng Tongda Stainless Steel Beijing Jingnanfang Decoration Engineering Co., Ltd. Benxi Iron and Steel Chain Chon Metal (Foshan) Chain Chon Metal (Kunshan) Changhai Stainless Steel Changzhou General Import and Export Changzhou Taiye Sensing Technology Co., Ltd. Compart Precision Co. Dalian Yirui Import and Export Agent Co., Ltd. Daming International Import and Export Co., Ltd. Dongbei Special Steel Group Co., Ltd. Double Stone Steel Etco (China) International Trading Co., Ltd. FHY Corporation Foshan Foreign Economic Enterprise Foshan Hermes Steel Co., Ltd. Foshan Jinfeifan Stainless Steel Co. Foshan Topson Stainless Steel Co. Fugang Group Fujian Fuxin Special Steel Co., Ltd. Fujian Kaixi Stainless Steel Fujian Wuhang STS Products Co., Ltd. Gangzhan Steel Developing Co., Ltd. Globe Express Services Co., Ltd. Golden Fund International Trading Co. Guangdong Forward Metal Supply Chain Co., Ltd. Guangdong Guangxin Suntec Metal Holdings Co., Ltd. Guanghan Tiancheng Stainless Steel Products Co., Ltd. Guangxi Beihai Chengde Group Guangxi Wuzhou Jinhai Stainless Steel Co. Guangxi Wuzhou Jinhai Stainless Steel Co. Guangzhou Eversunny Trading Co., Ltd. Haimen Senda Decoration Material Co. Hanyang Stainless Steel Co. (LISCO) Hebei Iron & Steel Henan Tianhong Metal (Subsidiary of Foshan Mellow Stainless Steel Company) Henan Xinjinhui Stainless Steel Co., Ltd. (Jinhui Group) Henan Xuyuan Stainless Steel Co., Ltd. Huadi Steel Group Co., Ltd.	

	Period to be reviewed
Ideal Products of Dongguan Ltd. Irestal Shanghai Stainless Pipe (ISSP) Jaway Metal Co., Ltd. Jiangdu Ao Jian Sports Apparatus Factory Jiangsu Daming Metal Products Co., Ltd. Jiangsu Jihongxin Stainless Steel Co., Ltd. Jiaxing Winner Import and Export Co., Ltd. Jiaxing Zhongda Import and Export Co., Ltd. Jieyang Baowei Stainless Steel Co., Ltd. Jinyun Xintongmao Jiuquan Iron & Steel (JISCO) Kuehne & Nagel, Ltd. (Ningbo) La Qin (Hong Kong) Co., Ltd. Lianzhong Stainless Steel Corp. (LISCO) Maanshan Sungood Machinery Equipment Co., Ltd. Minmetals Steel Co., Ltd. Nanhi Tengshao Metal Manufacturing Co. NB (Ningbo) Rilson Export & Import Corp. Ningbo Baoxin Stainless Steel Co., Ltd. Ningbo Bestco Import & Export Co., Ltd. Ningbo Bingcheng Import & Export Co., Ltd. Ningbo Chinaworld Grand Import & Export Co., Ltd. Ningbo Dawon Resources Co., Ltd. No. Ningbo Economic and Technological Development Zone (Beilun Xiapu) Ningbo Hog Slat Trading Co., Ltd. Ningbo New Hailong Import & Export Co. Ningbo Polaris Metal Products Co. Ningbo Portec Sealing Component Ningbo Qiye Precision Metals Co., Ltd. Ningbo Seduno Import & Export Co., Ltd. Ningbo Sunico International Ltd. Ningbo Swoop Import & Export Ningbo Yaoyi International Trading Co., Ltd. Onetouch Business Service, Ltd. Qianyan Stainless Steel Qingdao Rising Sun International Trading Co., Ltd. Qingdao-Pohang Stainless Steel (QPSS) Qingdao Sincerely Steel Rihong Stainless Co., Ltd. Ruitian Steel Samsung Precision Stainless Steel (Pinghu) Co., Ltd. Sejung Sea & Air Co., Ltd. Shainghai Fengye Industry Co., Ltd. Shandong Huaye Stainless Steel Group Co., Ltd. Shandong Mengyin Huaran Imp and Exp Co., Ltd. Shandong Mingwei Stainless Steel Products Co., Ltd. Shanghai Dongjing Import & Export Co. Shanghai Ganglian E-Commerce Holdings Co., Ltd. Shanghai Krupp Stainless (SKS) Shanghai Metal Corporation Shanghai Tankli Alloy Material Co., Ltd. Shanxi Taigang Stainless Steel Co., Ltd. (TISCO) Shaoxing Andrew Metal Manufactured Co., Ltd. Shaoxing Yuzhihang Import & Export Trade Co., Ltd. Shenzhen Brilliant Sign Co., Ltd. Shenzhen Wide International Trade Co., Ltd. Sichuan Southwest Stainless Steel Sichuan Tianhong Stainless Steel Sino Base Metal Co., Ltd. Suzhou Xincheng Precision Industrial Materials Co., Ltd. Taiyuan Accu Point Technology, Co. Ltd. Taiyuan Iron & Steel (TISCO) Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd. Taizhou Durable Hardware Co., Ltd. Tiancheng Stainless Steel Products Tianjin Fulida Supply Co., Ltd. Tianjin Hongji Stainless Steel Products Co. Ltd. Tianjin Jiuyu Trade Co., Ltd. Tianjin Taigang Daming Metal Product Co., Ltd. Tianjin Teda Ganghua Trade Co., Ltd. Tianjin Tianchengjida Import & Export Trade Co., Ltd. Tianjin Tianguan Yuantong Stainless Steel Tiashan Steel TISCO Stainless Steel (HK) Ltd.	

	Period to be reviewed
Top Honest Stainless Steel Co., Ltd. TPCO Yuantong Stainless Steel Ware Tsingshan Qingyuan World Express Freight Co., Ltd. Wuxi Baochang Metal Products Co., Ltd. Wuxi Fangzhu Precision Materials Co. Wuxi Grand Tang Metal Co., Ltd. Wuxi Jinyate Steel Co., Ltd. Wuxi Joyray International Corp. Wuxi Shuoyang Stainless Steel Co., Ltd. Xiamen Lizhou Hardware Spring Co., Ltd. Xinwen Mining Yieh Corp. Ltd. Yongjin Metal Technology Yuyao Purenovo Stainless Steel Co., Ltd. Zhangjiagang Pohang Stainless Steel Co., Ltd. (ZPSS) Zhejiang Baohong Stainless Steel Co., Ltd. Zhejiang Huashun Metals Co., Ltd. Zhejiang Jaguar Import & Export Co., Ltd. Zhejiang New Vision Import & Export Zhejiang Yongjin Metal Technology Co., Ltd. Zhejiang Yongyin Metal Tech Co. Zhengzhou Mingtai Industry Co., Ltd. Zhenjiang Huaxin Import & Export Zhenshi Group Eastern Special Steel Co., Ltd Zun Hua City Transcend Ti-Gold THE PEOPLE'S REPUBLIC OF CHINA: Wooden Cabinets and Vanities and Components Thereof, A-570-106	10/9/19-3/31/21
Anhui Swanch Cabinetry Co., Ltd. Anhui Xinyuanda Cupboard Co., Ltd. Dalian Hualing Wood Co., Ltd. Dalian Jiaye Wood Products Co., Ltd. Dalian Meisen Woodworking Co. Ltd. Dandong Laroyal Cabinetry Co., Ltd. Deqing Meisheng Import and Export Co., Ltd. Foremost Worldwide Co. Ltd. Fujian Dushi Wooden Industry Co., Ltd. Fujian Senyi Kitchen Cabinet Co., Ltd Fuzhou CBM Import & Export Co., Ltd. Fuzhou Minlian Wood Industry Co., Ltd. Fuzhou Pyrashine Trading Co., Ltd. Guangzhou Nuolande Import and Export Co., Ltd. Hangzhou Entop Houseware Co., Ltd. Hangzhou Hoco Kitchen & Bath Products Co., Ltd. Hangzhou Home Dee Sanitary Ware Co., Ltd. Hangzhou Royo Import & Export Co., Ltd. Heyond Cabinet Co., Ltd. Honsoar New Building Material Co., Ltd HS Furniture Industrial Co., Ltd. Jiang Su Rongxin Import and Export Co., Ltd. Jiang Su Rongxin Wood Industry Co. Ltd Jiang Su Rongxin Cabinets Ltd Jiangsu Beichen Wood Co., Ltd. Jiangsu Sunwell Cabinetry Co., Ltd. Jiangsu Weisen Houseware Co., Ltd Jiangsu Xiangsheng Bedtime Furniture Co., Ltd. KM Cabinetry Co., Limited Km Cabinetry Co., Ltd. Kunshan Baiyulan Furniture Co., Ltd. Linshu Meibang Furniture Co., Ltd. Linyi Bomei Furniture Co., Ltd. Linyi Bonn Flooring Manufacture Co., Ltd. Linyi Kaipu Furniture Co., Ltd. Morewood Cabinetry Co., Ltd. Nantong Aershin Cabinets Co., Ltd. Pizhou Ouyme Import & Export Trade Co., Ltd. Qingdao Shousheng Industry Co., Ltd Qufu Xinyu Furniture Co., Ltd. Rizhao Foremost Woodwork Manufacturing Company Ltd. Senke Manufacturing Company Shandong Huanmei Wood Co., Ltd Shandong Longsen Woods Co., Ltd. Shanghai Beautystar Cabinetry Co., Ltd. Shanghai Zifeng Industries Development Co., Ltd. Shanghai Zifeng International Trading Co., Ltd	

	Period to be reviewed
Sheen Lead International Trading (Shanghai) Co., Ltd. Shenzhen Pengchengzhirong Trade Co., Ltd. Shouguang Fushi Wood Co., Ltd. Shouguang Jinxiangyuan Home Furnishing Co., Ltd. Shouguang Sanyang Wood Industry Co., Ltd. Suzhou Siemo Wood Import & Export Co., Ltd. Taishan Oversea Trading Co., Ltd. Tech Forest Cabinetry Co., Ltd. The Ancientree Cabinet Co., Ltd. Weifang Fuxing Wood Co., Ltd. Weihai Jarlin Cabinetry Manufacture Co., Ltd. Xiamen Adler Cabinetry Co., Ltd. Xiamen Goldenhome Co., Ltd. Xuzhou Yihe Wood Co., Ltd. Yichun Dongmeng Wood Co., Ltd. Yixing Pengjia Cabinetry Co., Ltd. ZBOM Cabinets Co., Ltd. Zhangzhou OCA Furniture Co., Ltd. Zhongshan KM Cabinetry Co., Ltd. Zhoushan For-strong Wood Co., Ltd.	
CVD Proceedings	
INDIA: Carbon and Alloy Steel Threaded Rod, C-533-888	7/29/19 –12/31/20
Mangal Steel Enterprises Limited	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions, ⁸ C-570-968	1/1/19–12/31/19
Kingtom Aluminio S.R.L.	
THE PEOPLE'S REPUBLIC OF CHINA: Carbon and Alloy Steel Threaded Rod, C-570-105	7/29/19–12/31/20
Cooper & Turner (Ningbo) International Trading Co., Ltd.	
EC International (Nantong) Co., Ltd.	
Haiyan Qinshan Rubber Factory	
IFI & Morgan Ltd.	
Jiaxing Genteel Import & Export Co., Ltd.	
Nantong Runyou Metal Products Co., Ltd.	
Ningbo Dingtuo Imp. & Exp. Co., Ltd.	
Ningbo Dongxin High-Strength Nut Co., Ltd.	
Ningbo Jinding Fastening Piece Co., Ltd.	
Ningbo Qunli Fastener Manufacture Co., Ltd.	
Ningbo Shareway Import & Export Co., Ltd.	
Ningbo Xingsheng Oil Pipe Fittings Manufacture Co., Ltd.	
Ningbo Zhenghai Yongding Fastener Co., Ltd.	
Ningbo Zhenghai Yongding Fasteners Manufacture Co., Ltd.	
Ningbo Zhenhai Zhongbiao Standard Parts Factory	
Ningbo Zhongjiang High Strength Bolts Co., Ltd.	
RMB Fasteners Ltd.	
Zhejiang Cooper & Turner Fasteners Co., Ltd.	
Zhejiang Golden Automotive Fastener Co., Ltd.	
Zhejiang Heiter Mfg & Trade Co., Ltd.	
Zhejiang Huiyou Import & Export Co., Ltd.	
Zhejiang Junyue Standard Part Co., Ltd.	
Zhejiang Morgan Brother Technology Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Aluminum Foil, C-570-054	1/1/20–12/31/20
Alcha International Holdings Limited	
Anhui Maximum Aluminium Industries Company Ltd.	
Baotou Alcha Aluminum Co., Ltd.	
Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.	
Granges Aluminum (Shanghai) Co., Ltd.	
Guangxi Baise Xinghe Aluminum Industry Co., Ltd.	
Hangzhou DingCheng Aluminium Co., Ltd.	
Hangzhou Dingsheng Import & Export Co. Ltd.	
Hangzhou Dingsheng Industrial Group Co. Ltd.	
Hangzhou Five Star Aluminum Co., Ltd.	
Hangzhou Teemful Aluminum Co., Ltd.	
Hunan Suntown Marketing Limited	
Jiangsu Alcha Aluminium Co., Ltd.	
Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.	
Jiangsu Huafeng Aluminum Industry Co., Ltd.	
Jiangsu Zhongji Lamination Materials Co., (HK) Limited	
Jiangsu Zhongji Lamination Materials Co., Ltd. (f/k/a/Jiangsu Zhongji Lamination Materials Stock Co., Ltd.)	
Jiangyin Dolphin Pack Ltd. Co.	
Luoyang Longding Aluminum Industries Co., Ltd.	
Shandong Yuanrui Metal Material Co., Ltd.	
Shanghai Huafon Aluminium Corporation (formerly Huafon Nikkei Aluminum Corporation)	
Shantou Wanshun Package Material Stock Co., Ltd.	
SNTO International Trade Limited	

	Period to be reviewed
Suntown Technology Group Corporation Limited Walson (HK) Trading Co., Limited Xiamen Xiashun Aluminium Foil Co. Ltd. Yantai Donghai Aluminum Co., Ltd. Yangtai Jintai International Trade. Co., Ltd. Yinbang Clad Material Co., Ltd. Zhejiang Zhongjin Aluminum Industry Co., Ltd. THE PEOPLE'S REPUBLIC OF CHINA: Stainless Steel Sheet and Strip, C-570-043 Ahonest Changjiang Stainless Co., Ltd. Angang Guangzhou Stainless Steel Corporation Angang Hanyang Stainless Steel Corp. Anping Yuanjing Metal Products Co., Ltd. Apex Industries Corporation Baofeng Xianlong Stainless Steel (Baofeng Steel Group Co.) Baoding Steel Ltd. Baosteel Desheng Stainless Steel Co., Ltd. Baosteel Stainless Steel Co., Ltd. Baotou Huayong Stainless Steel Co., Ltd. Beihai Chengde Ferronickel Stainless Steel Beijing Dayang Metal Industry Co. Beijing Hengsheng Tongda Stainless Steel Beijing Jingnanfang Decoration Engineering Co., Ltd. Benxi Iron and Steel Chain Chon Metal (Foshan) Chain Chon Metal (Kunshan) Changhai Stainless Steel Changzhou General Import and Export Changzhou Taiye Sensing Technology Co., Ltd. Compart Precision Co. Dalian Yirui Import and Export Agent Co., Ltd. Daming International Import and Export Co., Ltd. Dongbei Special Steel Group Co., Ltd. Double Stone Steel Etco (China) International Trading Co., Ltd. FHY Corporation Foshan Foreign Economic Enterprise Foshan Hermes Steel Co., Ltd. Foshan Jinfeifan Stainless Steel Co. Foshan Topson Stainless Steel Co. Fugang Group Fujian Fuxin Special Steel Co., Ltd. Fujian Kaixi Stainless Steel Fujian Wuhang STS Products Co., Ltd. Gangzhan Steel Developing Co., Ltd. Globe Express Services Co., Ltd. Golden Fund International Trading Co. Guangdong Forward Metal Supply Chain Co., Ltd. Guangdong Guangxin Suntec Metal Holdings Co., Ltd. Guanghan Tiancheng Stainless Steel Products Co., Ltd. Guangxi Beihai Chengde Group Guangxi Wuzhou Jinhai Stainless Steel Co. Guangxi Wuzhou Jinhai Stainless Steel Co. Guangzhou Eversunny Trading Co., Ltd. Haimen Senda Decoration Material Co. Hanyang Stainless Steel Co. (LISCO) Hebei Iron & Steel Henan Tianhong Metal (Subsidiary of Foshan Mellow Stainless Steel Company) Henan Xinjinhui Stainless Steel Co., Ltd. (Jinhui Group) Henan Xuyuan Stainless Steel Co., Ltd. Huadi Steel Group Co., Ltd. Ideal Products of Dongguan Ltd. Irestal Shanghai Stainless Pipe (ISSP) Jaway Metal Co., Ltd. Jiangdu Ao Jian Sports Apparatus Factory Jiangsu Daming Metal Products Co., Ltd. Jiangsu Jihongxin Stainless Steel Co., Ltd. Jiaxing Winner Import and Export Co., Ltd. Jiaxing Zhongda Import and Export Co., Ltd. Jieyang Baowei Stainless Steel Co., Ltd. Jinyun Xintongmao Jiuquan Iron & Steel (JISCO) Kuehne & Nagel, Ltd. (Ningbo) La Qin (Hong Kong) Co., Ltd. Lianzhong Stainless Steel Corp. (LISCO)	1/1/20–12/31/20

	Period to be reviewed
Maanshan Sungood Machinery Equipment Co., Ltd. Minmetals Steel Co., Ltd. Nanhi Tengshao Metal Manufacturing Co. NB (Ningbo) Rilson Export & Import Corp. Ningbo Baoxin Stainless Steel Co., Ltd. Ningbo Bestco Import & Export Co., Ltd. Ningbo Bingcheng Import & Export Co., Ltd. Ningbo Chinaworld Grand Import & Export Co., Ltd. Ningbo Dawon Resources Co., Ltd. No. Ningbo Economic and Technological Development Zone (Beilun Xiapu) Ningbo Hog Slat Trading Co., Ltd. Ningbo New Hailong Import & Export Co. Ningbo Polaris Metal Products Co. Ningbo Portec Sealing Component Ningbo Qiyi Precision Metals Co., Ltd. Ningbo Seduno Import & Export Co., Ltd. Ningbo Sunico International Ltd. Ningbo Swoop Import & Export Ningbo Yaoyi International Trading Co., Ltd. Onetouch Business Service, Ltd. Qianyuan Stainless Steel Qingdao Rising Sun International Trading Co., Ltd. Qingdao-Pohang Stainless Steel (QPSS) Qingdao Sincerely Steel Rihong Stainless Co., Ltd. Ruitian Steel Samsung Precision Stainless Steel (Pinghu) Co., Ltd. Sejung Sea & Air Co., Ltd. Shainghai Fengye Industry Co., Ltd. Shandong Huaye Stainless Steel Group Co., Ltd. Shandong Mengyin Huaran Imp and Exp Co., Ltd. Shandong Mingwei Stainless Steel Products Co., Ltd. Shanghai Dongjing Import & Export Co. Shanghai Ganglian E-Commerce Holdings Co., Ltd. Shanghai Krupp Stainless (SKS) Shanghai Metal Corporation Shanghai Tankli Alloy Material Co., Ltd. L Shanxi Taigang Stainless Steel Co., Ltd. (TISCO) Shaoxing Andrew Metal Manufactured Co., Ltd. Shaoxing Yuzhihang Import & Export Trade Co., Ltd. Shenzhen Brilliant Sign Co., Ltd. Shenzhen Wide International Trade Co., Ltd. Sichuan Southwest Stainless Steel Sichuan Tianhong Stainless Steel Sino Base Metal Co., Ltd. Suzhou Xincheng Precision Industrial Materials Co., Ltd. Taiyuan Accu Point Technology, Co. Ltd. Taiyuan Iron & Steel (TISCO) Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd. Taizhou Durable Hardware Co., Ltd. Tiancheng Stainless Steel Products Tianjin Fulida Supply Co., Ltd. Tianjin Hongji Stainless Steel Products Co. Ltd. Tianjin Jiuyu Trade Co., Ltd. Tianjin Taigang Daming Metal Product Co., Ltd. Tianjin Teda Ganghua Trade Co., Ltd. Tianjin Tianchengjida Import & Export Trade Co., Ltd. Tianjin Tianguan Yuantong Stainless Steel Tiashan Steel TISCO Stainless Steel (HK) Ltd. Top Honest Stainless Steel Co., Ltd. TPCO Yuantong Stainless Steel Ware Tsingshan Qingyuan World Express Freight Co., Ltd. Wuxi Baochang Metal Products Co., Ltd. Wuxi Fangzhu Precision Materials Co. Wuxi Grand Tang Metal Co., Ltd. Wuxi Jinyate Steel Co., Ltd. Wuxi Joyray International Corp. Wuxi Shuoyang Stainless Steel Co., Ltd. Xiamen Lizhou Hardware Spring Co., Ltd. Xinwen Mining Yieh Corp. Ltd. Yongjin Metal Technology	

	Period to be reviewed
Yuyao Purenovo Stainless Steel Co., Ltd. Zhangjiagang Pohang Stainless Steel Co., Ltd. (ZPSS) Zhejiang Baohong Stainless Steel Co., Ltd. Zhejiang Huashun Metals Co., Ltd. Zhejiang Jaguar Import & Export Co., Ltd. Zhejiang New Vision Import & Export Zhejiang Yongjin Metal Technology Co., Ltd. Zhejiang Yongyin Metal Tech Co. Zhengzhou Mingtai Industry Co., Ltd. Zhenjiang Huaxin Import & Export Zhenshi Group Eastern Special Steel Co., Ltd Zun Hua City Transcend Ti-Gold THE PEOPLE'S REPUBLIC OF CHINA: Wooden Cabinets and Vanities and Components Thereof, C-570-107 Anhui Swanch Cabinetry Co., Ltd. Anhui Xinyuanda Cupboard Co., Ltd Dalian Hualing Wood Co., Ltd. Dalian Jiaye Wood products Co., Ltd. Dalian Meisen Woodworking Co., Ltd. Dandong Laroyal Cabinetry Co., Ltd. Foremost Worldwide Co. Ltd. Fujian Dushi Wooden Industry Co., Ltd. Fujian Senyi Kitchen Cabinet Co., Ltd Fuzhou CBM Import & Export Co., Ltd. Fuzhou Minlian Wood Industry Co., Ltd. Guangzhou Nuolande Import and Export Co., Ltd. Hangzhou Hoco Kitchen & bath Products Co., Ltd. Hangzhou Home Dee Sanitary Ware Co., Ltd. Hangzhou Royo Import & Export Co., Ltd. Hangzhou Entop Houseware Co., Ltd. Heyond Cabinet Co., Ltd. Honsoar New Building Material Co., Ltd HS Furniture Industrial Co., Ltd. Jiang Su Rongxin Wood Industry Co. Ltd Jiang Su Rongxin Cabinets Ltd Jiangsu Beichen Wood Co., Ltd. Jiangsu Sunwell Cabinetry Co., Ltd. Jiangsu Weisen Houseware Co., Ltd. Jiangsu Xiangsheng Bedtime Furniture Co., Ltd. KM Cabinetry Co., Limited Kunshan Baiyulan Furniture Co., Ltd. Linyi Bomei Furniture Co., Ltd Linyi Bonn Flooring Manufacture Co., Ltd. Linyi Kaipu Furniture Co., Ltd. Morewood Cabinetry Co., Ltd. Nantong Aershin Cabinets Co., Ltd. Pizhou Ouyme Import & Export Trade Co., Ltd. Qingdao Shousheng Industry Co., Ltd Qufu Xinyu Furniture Co., Ltd Rizhao Foremost Landbridge Wood Industries Co., Ltd. Rizhao Foremost Woodwork Manufacturing Company Ltd. Senke Manufacturing Company Shandong Huanmei Wood Co., Ltd Shandong Longsen Woods Co., Ltd. Shanghai Beautystar Cabinetry Co., Ltd. Shanghai Zifeng International Trading Co., Ltd Sheen Lead International Trading (Shanghai) Co., Ltd. Shenzhen Pengchengzhirong Trade Co., Ltd. Shouguang Fushi Wood Co., Ltd Shouguang Jinxiangyuan Home Furnishing Co., Ltd Shouguang Sanyang Wood Industry Co., Ltd Suzhou Siemo Wood Import & Export Co., Ltd. Tech Forest Cabinetry Co., Ltd The Ancientree Cabinet Co., Ltd. Weifang Fuxing Wood Co., Ltd. Weihai Jarlin Cabinetry Manufacture Co., Ltd. Xiamen Adler Cabinetry Co., Ltd. Xiamen Goldenhome Co., Ltd Xuzhou Yihe Wood Co., Ltd. Yichun Dongmeng Wood Co., Ltd Yixing Pengjia Cabinetry Co., Ltd. Zhangzhou OCA Furniture Co., Ltd. Zhongshan KM Cabinetry Co., Ltd Zhoushan For-strong Wood Co., Ltd.	8/12/19-12/31/20

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

⁵ Commerce inadvertently stated that we were initiating an antidumping duty administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand produced and exported by certain companies for which the antidumping duty order was revoked in the initiation notice for this administrative review. Commerce is correcting that initiation notice here. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 17124 (April 1, 2021). This Order was revoked with respect to subject merchandise produced and exported by Chanthaburi Frozen Food Co., Ltd.; Chanthaburi Seafoods Co., Ltd.; and Phatthana Seafood Co., Ltd. See *Implementation of the Findings of the WTO Panel in United States-Antidumping Measure on Shrimp from Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand*, 74 FR 5638 (January 20, 2009). In addition, this Order was also revoked with respect to subject merchandise produced and exported by Phatthana Frozen Food Co., Ltd. and Sea Wealth Frozen Food Co., Ltd. See *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part*, 74 FR 52452 (October 13, 2009). Accordingly, we are initiating this review for these exporters only with respect to shrimp produced in Thailand by another entity.

⁶ In the initiation notice that published on July 10, 2020 (85 FR 41545) Commerce inadvertently misspelled the company name listed above. The correct spelling of the company is listed in this notice.

⁷ In past reviews, Commerce has treated these companies as a single entity. See, e.g., *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Recission of Administrative Review, in Part; 2018–2019*, 86 FR 10539 (February 22, 2021). We also received request for Jacobi Carbons, Inc., however, Jacobi Carbons, Inc. is a U.S. affiliate of Jacobi Carbons AB.

⁸ In the initiation notice that published on July 10, 2020 (85 FR 41545) Commerce inadvertently misspelled the company name listed above. The correct spelling of the company is listed in this notice.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant “gap” period of the order (i.e., the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce’s regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (e.g., the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce’s regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule*,⁹ available

⁹ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also the frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

at <https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁰

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule*.¹¹ Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.¹² In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the

¹⁰ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19*, 85 FR 41363 (July 10, 2020).

¹¹ See section 782(b) of the Act; see also *Final Rule*; and the frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

¹² See 19 CFR 351.302.

circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule*, available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: June 7, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021-12278 Filed 6-10-21; 8:45 am]

BILLING CODE 3510-DS-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete product(s) previously furnished by such agencies.

DATES: Comments must be received on or before: July 11, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202-414.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for

production by the nonprofit agencies listed:

Service(s)

Service Type: Base Operation Support Services

Mandatory for: United States Coast Guard, Air Station Barber's Point, Kapolei, HI

Designated Source of Supply: Service Disabled Veterans Business Association, Silver Springs, MD

Contracting Activity: U.S. COAST GUARD, DOL-9

Service Type: Facility Maintenance Support Service

Mandatory for: U.S. Marshals Service, U.S. Marshals Service Headquarters, Arlington, VA

Mandatory Source of Supply: Chimes District of Columbia, Baltimore, MD

Contracting Activity: U.S. MARSHALS SERVICE, U.S. DEPT OF JUSTICE, USMS

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

4240-00-NIB-0239—Self-Contained Breathing Apparatus Identifier Tags
4240-00-NIB-0276—Label, Custom, SBCA ID, Adhesive Back, Photoluminescent

Designated Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s): 7510-01-350-1810—Correction Tape, Refill Cartridge, White, 12m

Designated Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 7510-01-350-1810—Correction Tape, Refill Cartridge, White, 12m

Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 6850-00-973-9091—Penetrating Fluid

Designated Source of Supply: The Lighthouse for the Blind, St. Louis, MO

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s): 8465-01-580-0967—M-4 magazine Side-by-Side Pouch, OCP

Designated Source of Supply: Chautauqua County Chapter, NYSARC, Jamestown, NY

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s): 8465-01-580-0967—M-4 magazine Side-by-Side Pouch, OCP

Designated Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc.,

Corbin, KY
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Deputy Director, Business Operations.

[FR Doc. 2021-12271 Filed 6-10-21; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: Date added to and deleted from the Procurement List: July 11, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 12/18/2020 and 1/29/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s): MR 10793—Refrigerator Freshener, Includes Shipper 20793

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: Military Resale-Defense Commissary Agency

Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4

Distribution: C-List

NSN(s)—Product Name(s): 6135–01–630–6867—Battery, Zinc Carbon, Lantern, Non-Rechargeable, 6V, Screw Terminal

Designated Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA LAND AND MARITIME

Mandatory for: 100% of the requirement of the Department of Defense

Distribution: C-List

Service(s)

Service Type: Base Supply Center

Mandatory for: Vance Air Force Base, Vance AFB OK

Designated Source of Supply: NewView Oklahoma, Inc., Oklahoma City, OK

Contracting Activity: DEPT OF THE AIR FORCE, FA3029 71 FTW CVC VANCE AFB

Deletions

On 5/7/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal

Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): MR 1165—Cloth, Dish, Terry Looped

Mandatory Source of Supply: Alphapointe, Kansas City, MO

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s): 6230–01–641–0755—Flashlight, Tactical-Style, LED, 2 AAA, 6" Long

Mandatory Source of Supply: Central Association for the Blind & Visually Impaired, Utica, NY

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Service(s)

Service Type: Custodial Services

Mandatory for: Social Security

Administration Building: Plaza Sierra Cayey, Building PR3871ZZ, Cayey, PR

Mandatory Source of Supply: The Corporate Source, Inc., Garden City, NY

Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R2

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2021–12272 Filed 6–10–21; 8:45 am]

BILLING CODE 6353–01–P

Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: Approval by the OMB has been requested by June 11, 2021. Interested persons are invited to submit comments on or before July 12, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2021–SCC–0087. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0087]

Agency Information Collection Activities; Comment Request; School Pulse Panel Preliminary Activities

AGENCY: Institute for Education Sciences (IES), National Center for Education

Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Pulse Panel Preliminary Activities.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local or Tribal Govt.

Total Estimated Number of Annual Responses: 4,120.

Total Estimated Number of Annual Burden Hours: 3,086.

Abstract: The School Pulse Panel is a new study to collect extensive data on issues concerning the impact of the COVID–19 pandemic on students and staff in U.S. public primary, middle, high, and combined-grade schools. It will be one of the nation's few sources of reliable data on a wealth of information focused on school reopening efforts, virus spread mitigation strategies, services offered for students and staff, and technology use, as reported by school district staff and principals in U.S. public schools. About 1,200 public elementary, middle, high, and combined-grade schools will be selected to participate in a panel where school and district staff will be asked to provide requested data monthly during the 2021–22 school years. This approach provides the ability to collect detailed information on various topics while also assessing changes in reopening efforts over time. Given the high demand for data collection during this time, the content of the survey may change on a quarterly basis.

The School Pulse Panel is essentially a continuation of the National Assessment of Education Progress (NAEP) 2021 School Survey (OMB #1850–0957) that was fielded in the spring of 2021. That NAEP 2021 School Survey met the need of Executive Order 14000 by using an existing sample and survey instrument to quickly collect information on instructional mode offerings and enrollment counts of various subgroups of students using the various instructional modes. The School Pulse Panel intends to continue to

collect this critical information, along with other priority items for the White House, Centers for Disease Control and Prevention, and Department of Education program offices throughout the 2021–22 school year.

Additional Information: NCES requests emergency clearance to allow us to comply with the January 21, 2021 Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers which states that the Department of Education must “coordinate with the Director of the Institute of Education Sciences to facilitate, consistent with applicable law, the collection of data necessary to fully understand the impact of the COVID–19 pandemic on students and educators, including data on the status of in-person learning. These data shall be disaggregated by student demographics, including race, ethnicity, disability, English-language-learner status, and free or reduced lunch status or other appropriate indicators of family income.” Normal clearance procedures would not allow IES to comply with the intent of this E.O. NCES will publish a **Federal Register** Notice soliciting 30 days of public comment on this collection concurrent with district and school recruitment.

Dated: June 8, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2021–12298 Filed 6–10–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0086]

Agency Information Collection Activities; Comment Request; National Study to Inform the 21st Century Community Learning Centers (CCLC) Program

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a request for a new OMB Control Number.

DATES: Interested persons are invited to submit comments on or before August 10, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–

2021–SCC–0086. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208DC, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Johnson, (202) 245–7676.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Study to Inform the 21st Century Community Learning Centers (CCLC) Program.

OMB Control Number: 1850–NEW.

Type of Review: Request for a new OMB Control Number.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 1,922.

Total Estimated Number of Annual Burden Hours: 707.

Abstract: The 21st CCLC program funds services during non-school hours, primarily during the school year. The services aim to help students meet state academic standards, particularly for students in low-performing schools that serve high concentrations of low-income families. Most participants (71 percent) are students attending afterschool centers during the school year, with the remainder being family members (14 percent) or summer attendees (15 percent). Afterschool centers supported by program funds provide a broad range of activities and services, such as academic enrichment, physical activity, service learning, and activities to engage families. Program activities and services may play a crucial role in addressing the substantial learning loss and other challenges that have occurred as a result of the COVID–19 pandemic.

This study will have two components. The first is a national snapshot of strategies that afterschool centers in the 21st CCLC program use to serve their students and families. The national snapshot will complement and extend information from the program's annual performance measures by providing an in-depth understanding of the key outcomes centers aim to promote and the diverse ways their activities and services for students and families, supports for staff, and improvement strategies are designed to promote these outcomes. Describing these strategies can provide insights into ways that centers seek to address longer-term challenges, such as learning loss and trauma, stemming from the pandemic. The second component is an evaluation of a continuous quality improvement system implemented in the program's afterschool centers. The evaluation will examine the implementation and effectiveness of a system focused on improving staff practices that promote students' social and emotional skills. Promoting these skills may be particularly important to compensate for the effects of the pandemic, in light of evidence that remote learning has negatively affected students' social and emotional well-being.

This package is the second of two packages. It only requests clearance for

data collection activities that will occur after March 2022 and impose burden on respondents. A previously submitted package (ICR Reference No. 202102–1850–003) requested clearance for data collection activities that will occur before March 2022.

Dated: June 7, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–12225 Filed 6–10–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Department of Energy (DOE)/National Science Foundation (NSF) Nuclear Science Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 19, 2021; 11:00 a.m.–2:15 p.m. (EDT).

ADDRESSES: This meeting is open to the public. This meeting will be held digitally via Zoom. Information to participate can be found on the website closer to the meeting date at: <https://science.osti.gov/np/nsac/meetings>.

FOR FURTHER INFORMATION CONTACT:

Brenda L. May, U.S. Department of Energy, SC–36/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290; Telephone: (301) 903–0536 or email: brenda.may@science.doe.gov.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda

Monday, July 19, 2021

- Call to Order, Introductions, Review of the Agenda
- Update from the Department of Energy and National Science Foundation's Nuclear Physics Office's
- Presentation of the Mo–99 Subcommittee Report

- Discussion of the NSAC Mo–99 Subcommittee Report
- NSAC Business/Discussions

Public Participation: The meeting is open to the public. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May at Brenda.May@science.doe.gov. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

The minutes of the meeting will be available for review on the U.S. Department of Energy's Office of Nuclear Physics website at: <https://science.osti.gov/np/nsac/meetings>.

Signed in Washington, DC, on June 8, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–12303 Filed 6–10–21; 8:45 am]

BILLING CODE 6450–01–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: EG21–164–000.

Applicants: Blythe Mesa Solar II, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blythe Mesa Solar II, LLC.

Filed Date: 6/2/21.

Accession Number: 20210602–5180.

Comments Due: 5 p.m. ET 6/23/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2474–023; ER10–2475–023; ER10–2605–015; ER10–2611–023; ER10–2984–051; ER10–3246–017; ER11–2044–037; ER11–3876–026; ER12–162–031; ER12–1626–012; ER13–1266–034; ER13–1267–011; ER13–1268–011; ER13–1269–011; ER13–1270–011; ER13–1271–011; ER13–1272–011; ER13–1273–011;

ER13-1441-011; ER13-1442-011; ER13-520-011; ER13-521-011; ER15-2211-031; ER16-1258-004; ER16-438-006; ER18-1419-004.

Applicants: Sierra Pacific Power Company, Nevada Power Company, Yuma Cogeneration Associates, Saranac Power Partners, L.P., Merrill Lynch Commodities, Inc., PacifiCorp, MidAmerican Energy Company, Cordova Energy Company LLC, Bishop Hill Energy II LLC, Topaz Solar Farms LLC, Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, CalEnergy, LLC, CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power L.L.C., Vulcan/BN Geothermal Power Company, Solar Star California XIX, LLC, Solar Star California XX, LLC, MidAmerican Energy Services, LLC, Marshall Wind Energy LLC, Grande Prairie Wind, LLC, Walnut Ridge Wind, LLC.

Description: Notice of Non-Material Change in Status of Sierra Pacific Power Company, et al.

Filed Date: 6/3/21.

Accession Number: 20210603-5169.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER10-2738-009; ER11-4267-014; ER20-2586-002 ER20-2587-001; ER20-2669-001.

Applicants: The Empire District Electric Company, North Fork Ridge Wind, LLC, Kings Point Wind, LLC, Neosho Ridge Wind, LLC, Algonquin Energy Services Inc.

Description: Notice of Non-Material Change in Status of The Empire District Electric Company, et al.

Filed Date: 6/4/21.

Accession Number: 20210604-5164.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER20-2065-001; ER20-2066-001.

Applicants: Antelope Expansion 3A, LLC, Antelope Expansion 3B, LLC.

Description: Notice of Non-Material Change in Status of Antelope Expansion 3A, LLC, et al.

Filed Date: 6/7/21.

Accession Number: 20210607-5139.

Comments Due: 5 p.m. ET 6/28/21.

Docket Numbers: ER21-383-002.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: Tariff Amendment: 2021-06-07 SA 3581 Deficiency Response to ATC-Muscoda Substitute CFA to be effective 6/4/2021.

Filed Date: 6/7/21.

Accession Number: 20210607-5100.

Comments Due: 5 p.m. ET 6/28/21.

Docket Numbers: ER21-625-002.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO compliance notice of delayed effective date—SENY reserve enhancements to be effective 6/10/2021.

Filed Date: 6/7/21.

Accession Number: 20210607-5099.

Comments Due: 5 p.m. ET 6/28/21.

Docket Numbers: ER21-2085-000

Applicants: Crawford Solar LLC.

Description: Petition for Limited Waiver of Crawford Solar LLC.

Filed Date: 6/4/21.

Accession Number: 20210604-5188.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21-2086-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6068; Queue No. P36 to be effective 5/10/2021.

Filed Date: 6/7/21.

Accession Number: 20210607-5068.

Comments Due: 5 p.m. ET 6/28/21.

Docket Numbers: ER21-2087-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: The Empire District Electric Company Formula Rate to be effective 5/14/2021.

Filed Date: 6/7/21.

Accession Number: 20210607-5076.

Comments Due: 5 p.m. ET 6/28/21.

Docket Numbers: ER21-2088-000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Photosol US Renewable Energy (Bayou Solar) LGIA Filing to be effective 5/21/2021.

Filed Date: 6/7/21.

Accession Number: 20210607-5085.

Comments Due: 5 p.m. ET 6/28/21.

Docket Numbers: ER21-2089-000.

Applicants: Elephant Energy, LLC.

Description: Baseline eTariff Filing: Initial Market Based Rate Tariff Filing—Elephant Energy to be effective 6/7/2021.

Filed Date: 6/7/21.

Accession Number: 20210607-5088.

Comments Due: 5 p.m. ET 6/28/21.

Docket Numbers: ER21-2090-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Service Agreement No. 894 to be effective 2/25/2020.

Filed Date: 6/7/21.

Accession Number: 20210607-5101.

Comments Due: 5 p.m. ET 6/28/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: June 7, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021-12296 Filed 6-10-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP17-913-005.

Applicants: Natural Gas Pipeline Company of America.

Description: Compliance filing Natural's Cost and Revenue Study Filing in Compliance with Docket No. RP17-913.

Filed Date: 6/1/21.

Accession Number: 20210601-5079.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: RP21-866-000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate—Maine Natural 210257 Release eff 6-1-2021 to be effective 6/1/2021.

Filed Date: 6/1/21.

Accession Number: 20210601-5004.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: RP21-867-000.

Applicants: Cheniere Corpus Christi Pipeline, LP.

Description: Compliance filing CP12-508-000—Corpus Christi Pipeline's Cost and Revenue Study.

Filed Date: 6/1/21.

Accession Number: 20210601-5006.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: RP21-868-000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 6-1-2021 to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5007.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–869–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing:
 Negotiated Rate Capacity Release
 Agreements—6/1/2021 to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5035.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–870–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Marathon 51753, 51754 to Spire 54108, 54107) to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5041.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–871–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing:
 Amendments to Neg Rate Agmts
 (Aethon 53154, 52454) to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5042.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–872–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 54074 to Exelon 54109) to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5043.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–873–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing:
 Remove Expired Negotiated Rate
 Agreements—6/1/2021 to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5044.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–874–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing:
 Negotiated Rates—Cherokee AGL—
 Replacement Shippers—Jun 2021 to be
 effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5045.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–875–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Annual Fuel Gas
 Reimbursement Report of Questar
 Southern Trails Pipeline Company.

Filed Date: 6/1/21.
Accession Number: 20210601–5047.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–876–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing:
 Negotiated Rates—Releases eff 6–01–
 2021 to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5048.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–877–000.
Applicants: Eastern Shore Natural Gas Company.
Description: § 4(d) Rate Filing: Fuel
 Retention & Cash-Out Adjustment 2021
 to be effective 7/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5049.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–878–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing:
 Negotiated Rate Filing—June 1, 2021 BP
 to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5050.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–879–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing:
 Negotiated Rates—Releases eff 6–1–
 2021 to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5052.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–880–000.
Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing:
 Negotiated Rates—Various Releases eff
 6–1–2021 to be effective 6/1/2021.
Filed Date: 6/1/21.
Accession Number: 20210601–5057.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–881–000.
Applicants: White River Hub, LLC.
Description: Annual Fuel Gas
 Reimbursement Report of White River
 Hub, LLC.

Filed Date: 6/1/21.
Accession Number: 20210601–5148.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–882–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Notice
 Regarding Non-Jurisdictional Gathering
 Facilities (PEG–1 –2 –3 –4 –164).

Filed Date: 6/1/21.
Accession Number: 20210601–5154.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–883–000.
Applicants: Enable Mississippi River Transmission, LLC.

Description: § 4(d) Rate Filing:
 Negotiated Rate Filing—6.1.2021 to be
 effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5158.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–884–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing:
 Negotiated Rates—Various June 1
 Capacity Releases to be effective 6/1/
 2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5184.
Comments Due: 5 p.m. ET 6/14/21.
Docket Numbers: RP21–885–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing:
 Negotiated Rates—Various Releases eff
 6–1–2021 to be effective 6/1/2021.

Filed Date: 6/1/21.
Accession Number: 20210601–5268.
Comments Due: 5 p.m. ET 6/14/21.

The filings are accessible in the
 Commission's eLibrary system ([https://
 elibrary.ferc.gov/idmws/search/
 fercgensearch.asp](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](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: June 4, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021–12251 Filed 6–10–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15148–000]

North Loup River Public Power & Irrigation District; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following
 hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application*: Exemption From Licensing.

b. *Project No.*: P-15148-000.

c. *Date filed*: May 21, 2021.

d. *Applicant*: North Loup River Public Power & Irrigation District (North Loup District).

e. *Name of Project*: Ord Diversion Dam Hydroelectric Project (project).

f. *Location*: On the North Loup River, in the Town of Ord, Valley County, Nebraska. No federal or tribal lands would be occupied by project works or located within the project boundary.

g. *Filed Pursuant to*: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact*: Amos Lange, General Manager of North Loup River Public Power & Irrigation District, 128 North 16th Street, Ord, NE 68862, and 308-728-3851.

i. *FERC Contact*: Shana Wiseman, 202-502-8736, and shana.wiseman@ferc.gov.

j. *Cooperating Agencies*: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the

application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: August 2, 2021.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. 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-15148-000.

m. The application is not ready for environmental analysis at this time.

n. *The proposed project would consist of*: (1) Five new concrete flumes placed directly at the base of the existing Ord Diversion dam (also known as the Hardenbrook Diversion Structure); (2) each flume would contain two vertical axis hydrokinetic turbines directly connected to a 480-volt, 3-phase generator for a 12 kilowatt (kW) capacity per flume, or 60 kW capacity for the project; (3) an existing irrigation canal; (4) a new turbine control and power

conditioning cabinet; (5) an new array control cabinet; (6) a new 0.5-mile-long transmission line; and (7) appurtenant facilities. The project is estimated to generate an average of 394 megawatt-hours annually. North Loup District proposes to operate the project in a run-of-river mode.

o. A copy of the application may be viewed and/or printed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued on March 13, 2020. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Nebraska State Historic Preservation Officer (SHPO), as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule*: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate (e.g., if there are no deficiencies and/or scoping is waived, the schedule would be shortened).

Milestone	Target date
Issue Deficiency/Additional Information Request (if necessary)	July 2021.
Issue Acceptance Letter/Ready for Environmental Analysis	November 2021.
Commission issues EA	February 2022.

Dated: June 3, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-12253 Filed 6-10-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21-69-000]

Dairyland Power Cooperative; Notice of Amendment of Request for Partial Waiver

Take notice that on June 2, 2021, pursuant to section 292.402 of the Federal Energy Regulatory

Commission's (Commission) regulations, 18 CFR 292.402, Dairyland Power Cooperative (Dairyland), on behalf of itself and 24 rural electric cooperative member-owners (collectively, the Participating Members),¹ filed an amendment to its

¹ Dairyland's Participating Member-owners joining in this petition are Barron Electric Cooperative, Bayfield Electric Cooperative, Chippewa Valley Electric Cooperative, Clark Electric Cooperative, Dunn Energy Cooperative, Eau Claire Energy Cooperative, Jackson Electric

April 27, 2021 filing of request for partial waiver of certain obligations imposed on the Participating Members and on Dairyland through the Commission's regulations² implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA),³ as more fully explained in the request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the 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 FEROnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (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

Cooperative, Jump River Electric Cooperative, Oakdale Electric Cooperative, Pierce Pepin Cooperative Services, Polk-Burnett Electric Cooperative, Price Electric Cooperative, Inc., Richland Electric Cooperative, Riverland Energy Cooperative, St. Croix Electric Cooperative, Scenic Rivers Energy Cooperative, Taylor Electric Cooperative, Vernon Electric Cooperative, Allamakee-Clayton Electric Cooperative, Inc., Heartland Power Cooperative, Freeborn-Mower Cooperative Services, People's Energy Cooperative, MiEnergy Cooperative, and Jo-Carroll Energy.

² 18 CFR 292.303(a) and .303(b).

³ 16 U.S.C. 824a-3.

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 June 14, 2021.

Dated: June 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021-12252 Filed 6-10-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR21-49-000.

Applicants: Black Hills Energy Arkansas, Inc.

Description: Tariff filing per 284.123(b)(2)+(g): BHEA SOC Filing to be effective 6/1/2021.

Filed Date: 6/1/2021.

Accession Number: 202106015185.

Comments Due: 5 p.m. ET 6/22/2021.

284.123(g) Protests Due: 5 p.m. ET 8/2/2021.

Docket Number: PR21-50-000.

Applicants: Gulf Coast Express Pipeline LLC.

Description: Tariff filing per 284.123(b),(e)+(g): Estimated Fuel Adjustment to be effective 6/1/2021.

Filed Date: 6/2/2021.

Accession Number: 202106025108.

Comments Due: 5 p.m. ET 6/23/2021.

284.123(g) Protests Due: 5 p.m. ET 8/2/2021.

Docket Numbers: RP21-886-000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 6-2-21 to be effective 6/1/2021.

Filed Date: 6/2/21.

Accession Number: 20210602-5034.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: RP21-890-000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2021-06-03 Negotiated Rate Agreements to be effective 6/1/2021.

Filed Date: 6/3/21.

Accession Number: 20210603-5149.

Comments Due: 5 p.m. ET 6/15/21.

Docket Numbers: RP15-904-002.

Applicants: Gas Transmission Northwest LLC.

Description: Pre-Arranged/Pre-Agreed (Amended Stipulation and Agreement of Settlement) Filing of Gas Transmission Northwest LLC.

Filed Date: 6/4/21.

Accession Number: 20210604-5180.

Comments Due: 5 p.m. ET 6/11/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: June 7, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021-12295 Filed 6-10-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL21-80-000; QF97-60-002]

ECP Uptown Campus LLC; Notice of Petition for Limited Waiver

Take notice that on June 1, 2021, pursuant to section 292.205(c) of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations,¹ implementing the Public Utility Regulatory Policies Act of 1978 (PURPA), ECP Uptown Campus LLC submitted a petition for a limited waiver of the efficiency standard set forth in 18 CFR 292.205(a)(2) for its cogeneration facility located in Pittsburgh, Pennsylvania, for the 2020 calendar year, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

¹ 18 CFR 292.205 (2020).

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the 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://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (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 June 22, 2021.

Dated: June 3, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-12254 Filed 6-10-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21-99-000.
Applicants: Panda Stonewall LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Panda Stonewall LLC.

Filed Date: 6/3/21.

Accession Number: 20210603-5146.

Comments Due: 5 p.m. ET 6/24/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-3115-006; ER10-3115-007.

Applicants: Waterside Power, LLC.

Description: Fifth Supplement to April 20, 2020 Triennial Market Power Update for the Northeast Region of Waterside Power, LLC and Third Supplement to June 30, 2020 Updated Market Power Analysis of Waterside Power, LLC.

Filed Date: 6/3/21.

Accession Number: 20210603-5160.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER10-3117-008.

Applicants: Lea Power Partners, LLC.

Description: Fifth Supplement to April 20, 2020 Triennial Market Power Update for the Southwest Power Pool Region of Lea Power Partners, LLC.

Filed Date: 6/3/21.

Accession Number: 20210603-5159.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER11-4060-009; ER11-4061-009; ER13-445-009; ER14-2823-007; ER15-1170-005; ER15-1171-005; ER15-1172-005; ER15-1173-005.

Applicants: Badger Creek Limited, Bear Mountain Limited, Chalk Cliff Limited, Double C Generation Limited Partnership, High Sierra Limited, Kern Front Limited, Live Oak Limited, McKittrick Limited.

Description: Fourth Supplement to April 20, 2020 Triennial Market Power Update for the Southwest Power Pool Region of Badger Creek Limited, et al.

Filed Date: 6/3/21.

Accession Number: 20210603-5164.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER19-2462-004; ER10-2630-003; ER16-1914-003; ER18-2264-007.

Applicants: Macquarie Energy LLC, Macquarie Energy Trading LLC, NGP Blue Mountain I LLC, Patua Acquisition Company, LLC.

Description: Macquarie Energy LLC, et. al. submits Response Letter Regarding Public Release of Confidential Information.

Filed Date: 6/3/21.

Accession Number: 20210603-5166.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21-1988-000; ER21-1988-001.

Applicants: SP Garland Solar Storage, LLC.

Description: SP Garland Solar Storage, LLC submits Amendment to Application for Market Based Rate Authority.

Filed Date: 6/3/21.

Accession Number: 20210603-5162.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21-1989-000; ER21-1989-001.

Applicants: SP Tranquillity Solar Storage, LLC.

Description: SP Tranquillity Solar Storage, LLC submits Amendment to Application for Market Based Rate Authority.

Filed Date: 6/3/21.

Accession Number: 20210603-5165.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21-1988-002.

Applicants: SP Garland Solar Storage, LLC.

Description: Tariff Amendment: Additional Amendment of MBR Authority Application and Baseline Tariff Filing to be effective 5/31/2021.

Filed Date: 6/4/21.

Accession Number: 20210604-5001.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21-1989-002.

Applicants: SP Tranquillity Solar Storage, LLC.

Description: Tariff Amendment: Additional Amendment of MBR Authority Application and Baseline Tariff Filing to be effective 5/31/2021.

Filed Date: 6/4/21.

Accession Number: 20210604-5000.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21-2074-000.

Applicants: Tucson Electric Power Company.

Description: Tariff Cancellation: Cancellation of Service Agreement No. 322 to be effective 5/1/2021.

Filed Date: 6/3/21.

Accession Number: 20210603-5137.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21-2075-000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2021-06-03 PSC-TSGT-WAPA-PRPA-Boundary Meter-595-0.0.0 to be effective 8/1/2021.

Filed Date: 6/3/21.

Accession Number: 20210603-5147.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21-2076-000.

Applicants: Bulb US LLC.

Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 7/1/2021.

Filed Date: 6/3/21.

Accession Number: 20210603-5152.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21-2077-000.

Applicants: Bulb Energy US Inc.

Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 7/1/2021.
Filed Date: 6/3/21.

Accession Number: 20210603–5154.

Comments Due: 5 p.m. ET 6/24/21.

Docket Numbers: ER21–2078–000.

Applicants: ITC Midwest LLC, Interstate Power and Light Company.

Description: § 205(d) Rate Filing: Update to O&T Agreement Exhibits and Appendices (2021) to be effective 8/3/2021.

Filed Date: 6/4/21.

Accession Number: 20210604–5026.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–2079–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT and OA re: TLR Buy-Through Option to be effective 8/5/2021.

Filed Date: 6/4/21.

Accession Number: 20210604–5045.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–2080–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Concurrence IPL Amended Exhibits and Attachments (2021) to be effective 8/4/2021.

Filed Date: 6/4/21.

Accession Number: 20210604–5103.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–2081–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 3644; Queue Position Y2–018 (amend) to be effective 9/5/2014.

Filed Date: 6/4/21.

Accession Number: 20210604–5129.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–2082–000.

Applicants: Citizens S-Line Transmission LLC.

Description: Baseline eTariff Filing: Initial TO Tariff and Transmission Revenue Requirement Filing to be effective 12/31/9998.

Filed Date: 6/4/21.

Accession Number: 20210604–5151.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–2082–000.

Applicants: Citizens S-Line Transmission LLC.

Description: Baseline eTariff Filing: Initial TO Tariff and Transmission Revenue Requirement Filing to be effective 12/31/9998.

Filed Date: 6/4/21.

Accession Number: 20210604–5152.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–2083–000.

Applicants: Duke Energy Indiana, LLC.

Description: § 205(d) Rate Filing: DEI—Ameren Reimbursement Agreement RS No. 273 to be effective 6/5/2021.

Filed Date: 6/4/21.

Accession Number: 20210604–5153.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–2084–000.

Applicants: Coso Geothermal Power Holdings, LLC.

Description: Initial rate filing: Coso CoTenancy and Shared Facilities Agreement to be effective 6/4/2021.

Filed Date: 6/4/21.

Accession Number: 20210604–5156.

Comments Due: 5 p.m. ET 6/25/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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: June 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–12255 Filed 6–10–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10022–63–OCFO]

Privacy Act of 1974; System of Records

AGENCY: Office of the Chief Financial Officer (OCFO), Environmental Protection Agency (EPA).

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Office of the Chief Financial Officer, Office of Technology Solutions is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974. The e-Recovery system of records (EPA–90) is being

created to replace the Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) system of records (EPA–39). The e-Recovery system will be used to organize cost information and produce reports that summarize the costs for a specific Superfund Response or Oil Removal site, and will also be used to track Federal Emergency Management Agency (FEMA) mission assignment costs. The information previously stored in SCORPIOS will be stored in the e-Recovery system.

DATES: Persons wishing to comment on this system of records notice must do so by July 12, 2021. New routine uses for this new system of records will be effective July 12, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No., EPA–HQ–OMS–2019–0649 by one of the following methods:

Regulations.gov: www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: 202–566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OMS–2019–0649. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through www.regulations.gov. The www.regulations.gov website is an "anonymous access" system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider

your comment. If you send an email comment directly to the EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OMS Docket is (202) 566-1752.

Temporary Hours During COVID-19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the 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:

Andrew Lam, Ronald Reagan Building, 1300 Pennsylvania Ave. NW, Washington, DC 20460, Office of Chief Financial Officer, (202) 564-2925, Lam.Andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has the authority to recover costs associated with its response to releases or threatened releases of hazardous substances, or discharges or threatened discharges of oil. EPA will use the e-

Recovery system to organize and produce reports detailing this cost information. To support the recovery of certain removal costs associated with threatened or actual discharges of oil, EPA submits a Cost Recovery Package (CRP) to the U.S. Coast Guard (USCG). Previously, EPA used SCORPIOS to prepare the CRP; however, because SCORPIOS uses old technology that has become difficult and expensive for the Agency to maintain, the SCORPIOS system will be replaced with the more modern e-Recovery system. SCORPIOS will be decommissioned once e-Recovery goes live.

SYSTEM NAME AND NUMBER:

e-Recovery, EPA-90.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

109 T.W. Alexander Drive, NCC Building, Durham, NC 27711.

SYSTEM MANAGER(S):

Michael Clanton, Director, Office of Technology Solutions, (202) 564-1084, Clanton.Michael@epa.gov, Ronald Reagan Building, 1300 Pennsylvania Ave. NW, Washington, DC 20460.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607; 5 U.S.C. 301; 31 U.S.C. 3512; Executive Order 9397 (Nov. 22, 1943); Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), 33 U.S.C. 1321; National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300.

PURPOSE(S) OF THE SYSTEM:

The e-Recovery system will maintain and organize cost information associated with responding to releases or threatened releases of hazardous substances or discharges or threatened discharges of oil, and will be used to track FEMA mission assignment costs. EPA will use the information stored in this system to produce cost reports, which will be used to support the Agency's recovery of its clean-up costs from responsible parties. EPA, the U.S. Department of Justice, and the U.S. Coast Guard will also use this information for litigation support purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EPA employees, EPA contractors, non-EPA government personnel, state and local government personnel and/or private citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

The e-Recovery system will store the following information: Social security number, name, home address, credit card number, other credit card information, driver's license number, other personal identification numbers (i.e., home phone numbers, membership numbers, personal license plates, etc.) and other personal information related to travel expenses such as home addresses, credit card numbers, and other recoverable expense items.

RECORD SOURCE CATEGORIES:

The primary source of data for e-Recovery is the Compass Data Warehouse (CDW). CDW is a system that consolidates financial data from several enterprise systems, such as Compass, Integrated Grants Management System (IGMS), People Plus, EPA Acquisition System (EAS), and Payment Tracking System (PTS), into a single relational database. All of the data that resides in the CDW originates from the enterprise systems and is a duplicate of data from the original source.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (73 FR 2245): General routine uses A, F, G, H, I, K, L, and M.

A. Disclosure for Law Enforcement Purposes: Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

F. Disclosure to Department of Justice: Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;
2. Any employee of the Agency in his or her official capacity;
3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or
4. The United States, if the Agency determines that litigation is likely to

affect the Agency or any of its components,

If a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives: Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others: Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals: Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

K. Disclosure in Connection With Litigation: Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

The two routine uses below (L and M) are required by OMB Memorandum M-17-12.

L. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information: To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. Disclosure to Assist Another Agency in Its Efforts to Respond to a Breach of Personally Identifiable Information: To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained electronically in computer databases and backup disks. Incremental backups run weeknights (Monday through Thursday), full backups run every weekend (Friday PM through Monday AM). These backups are maintained at the National Computer Center (NCC), 109 T.W. Alexander Drive, Durham, NC 27711.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by employee last name, pay period, and Superfund site identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

EPA will retain and dispose of these records in accordance with the National Archives and Records Administration General Records Schedule and EPA Records Schedule 0052, NARA Disposal Authority: DAA-GRS-2013-0003-0001. e-Recovery records are retained for at least 30 years after the completion of all cost recovery at a given Superfund Site.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal and/or sensitive data in the e-Recovery system are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800-53, "Security and Privacy Controls for Federal Information Systems and Organizations," Revision 5.

1. **Administrative Safeguards:** EPA employees and contractors are required to complete annual agency Information Security and Privacy training. EPA employees and contractors are instructed to lock their computers when they leave their desks.

2. **Technical Safeguards:** Computer records are maintained in a secure password protected environment. Access to computer records is limited to those who have a need to know. Personal Identification Verification (PIV) card is required to get access to e-Recovery. Permission level assignments allow users access only to those functions for which they are authorized.

3. **Physical Safeguards:** All records are maintained in secure, access-controlled areas or buildings.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information in this system of records about themselves are required to provide adequate identification (e.g., driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, should make a written request to the EPA, Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, privacy@epa.gov.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Federal Register: October 1, 2001 (Volume 66, Number 190).

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021-12230 Filed 6-10-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9056-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS)

Filed May 28, 2021 10 a.m. EST

Through June 7, 2021 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

EIS No. 20210066, Draft, FRA, NY, Western Rail Yard Infrastructure Project, Comment Period Ends: 07/26/2021, Contact: Andrea E. Poole 202-493-0624.

EIS No. 20210067, Final, FRA, NJ, Hudson Tunnel Project—Combined Final Environmental Impact Statement/Record of Decision and Final Section 4(f) Evaluation, Contact: Amishi Castelli 617-431-0416. Under 23 U.S.C. 139(n)(2), FRA is issuing a single document that consists of a final environmental impact statement and record of decision. Therefore, the review period does not apply.

EIS No. 20210068, Draft, BLM, CA, Whitewater River Groundwater Replenishment Facility Right of Way Project, Comment Period Ends: 07/26/2021, Contact: Brandon G. Anderson 951-697-5215.

EIS No. 20210069, Draft, USCG, ND, BNSF Railway Bridge 196.6 Project across the Missouri River, Morton and Burleigh Counties, Between Bismarck and Mandan, North Dakota, Comment Period Ends: 07/26/2021, Contact: Rob McCaskey 314-269-2381.

EIS No. 20210070, Final, USACE, CA, Lower Cache Creek, Yolo County, Woodland and Vicinity, CA, Flood Risk Management Feasibility Study, Review Period Ends: 07/12/2021, Contact: Keleigh Duey 916-557-5131.

EIS No. 20210071, Draft, USACE, LA, St. Tammany Parish, Louisiana Feasibility Study, Comment Period Ends: 07/26/2021, Contact: Everard Baker 504-862-1014.

Dated: June 7, 2021.

Candi Schaedle,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021-12293 Filed 6-10-21; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0286; FRS 31249]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 10, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of

time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0286.

Title: Section 80.302, Notice of Discontinuance, Reduction, or Impairment of Service Involving a Distress Watch.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and State, local, or tribal government.

Number of Respondents and Responses: 50 respondents and 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection 47 U.S.C. 154, 303, 307(e), 309 and 332, unless noted.

Total Annual Burden: 50 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The reporting requirement contained in section 80.302 is necessary to ensure that the U.S. Coast Guard is timely notified when a coast station, which is responsible for maintaining a listening watch on a designated marine distress and safety frequency discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021-12326 Filed 6-10-21; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION**Sunshine Act Meeting**

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 86 FR 30461.

PREVIOUSLY ANNOUNCED TIME, DATE, AND PLACE OF THE MEETING: Thursday, June 10, 2021 at 10:00 a.m., virtual meeting.

CHANGES IN THE MEETING: The June 10, 2021 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694-1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021-12450 Filed 6-9-21; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL MARITIME COMMISSION**Solicitation for Applications To Serve as Members on the National Shipper Advisory Committee**

AGENCY: Federal Maritime Commission.

ACTION: Request for applications.

SUMMARY: The Federal Maritime Commission ("Commission") is requesting applications from qualified candidates to be considered for appointment as a member of the National Shipper Advisory Committee ("Committee"). This recently established Committee will advise the Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system.

DATES: Applications should be sent to the email address specified below and must be received on or before June 30, 2021.

ADDRESSES: All applications should be emailed to the Designated Federal Officer (DFO), Rachel E. Dickon, Email: nsac@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Phone: (202) 523-5725; Email: nsac@fmc.gov. A copy of the Committee's charter can be obtained by accessing the Committee website at www.fmc.gov.

SUPPLEMENTARY INFORMATION: The National Shipper Advisory Committee is a federal advisory committee. It will operate under the provisions of the Federal Advisory Committee Act, 5 U.S.C. App., and 46 U.S.C. chapter 425. The Committee was established on January 1, 2021, when the National Defense Authorization Act for Fiscal

Year 2021 became law. Public Law 116-283, section 8604, 134 Stat. 3388 (2021). The Committee will provide information, insight, and expertise pertaining to conditions in the ocean freight delivery system to the Commission. Specifically, the Committee will advise the Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. 46 U.S.C. 42502(b).

The Committee will consist of twenty-four members, including a Chair and a Vice Chair, elected by the Committee from among the Committee's members. *Id.* 42502(c)(1), 42503(g). Twelve members will represent entities who export cargo from the United States using ocean common carriers and twelve members will represent entities who import cargo to the United States using ocean common carriers. *Id.* 42502(c)(3). The Commission intends to balance the membership of the Committee and will consider factors to include commodities shipped, ports used, geographic areas served, and origins of cargo, as well as other relevant factors. Appointments shall be made without discrimination on the basis of age, race, color, national origin, sex, disability, or religion.

Members are appointed by and serve at the pleasure of the Commission. *Id.* 42503(e)(2) and (3). The Commission may require an individual to pass an appropriate security background examination before appointment to the Committee. *Id.* 42503(e)(4). Under 46 U.S.C. 42503(e)(6)(a), membership terms expire on December 31 of the third full year after the effective date of the appointment. After a member's term expires, the member may continue to serve for up to one year until a successor is appointed. *Id.* 42503(e)(6)(B). Members' terms are renewable. *Id.* 42503(e)(8).

In accordance with 46 U.S.C. 42503(a), the Committee is required to hold meetings at least once a year, but it may meet at the call of the Commission or a majority of the Committee members. The Commission plans to host Committee meetings at Commission headquarters at 800 North Capitol Street Northwest, Washington, DC or virtually using video meeting technology. All members will serve at their own expense and receive no salary or other compensation from the Federal Government.

The following information must be included in the package of materials submitted for each individual applying for consideration:

(1) A statement that includes the name and affiliation of the applicant and a clear statement regarding the basis for the application, including the entity that the individual would represent, an explanation of how that entity is an exporter of cargo from or an importer of cargo to the United States using ocean common carriers, and a description of the individual's first-hand experience, knowledge, or expertise in matters relating to the international ocean freight delivery system;

(2) confirmation the applicant is willing to serve as a member of the Committee on a voluntary basis, without compensation or reimbursement;

(3) the applicant's contact information (please include address, daytime telephone number, and an email address); and

(4) a current copy of the applicant's curriculum vitae.

Applications may be submitted directly by the individual applying for consideration or by a person or organization recommending the candidate for consideration.

Members who qualify as special Government employees (SGEs) shall demonstrate that they are in compliance with applicable ethics laws and regulations and comply with any requests or measures necessary to allow the Commission's Designated Agency Ethics Official to access and review financial disclosure reports and conduct a conflict-of-interest analysis. Except for members who qualify as SGEs, members appointed to represent the interests of a particular group or entity are not subject to Federal rules and requirements that would interfere with that representation. 46 U.S.C. 42503(d)(1). Non-SGE members may be required to comply with Federal rules and laws governing employee conduct that will not impact their ability to represent the interests they were appointed to serve.

Dated: June 7, 2021.

By the Commission.

Rachel E. Dickon,
Secretary.

[FR Doc. 2021-12240 Filed 6-10-21; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than July 12, 2021.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to Comments.applications@stls.frb.org:

1. *The M&P Community Bancshares, Inc. 401(k) Employee Stock Ownership Plan, Newport, Arkansas*; to acquire additional voting shares of up to 39 percent of M&P Community Bancshares, Inc., and thereby indirectly acquire additional voting shares of Merchants and Planters Bank, both of Newport, Arkansas.

Board of Governors of the Federal Reserve System, June 8, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-12322 Filed 6-10-21; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-WWICC-2021-01; Docket No. 2021-0003; Sequence No. 1]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting; Correction

AGENCY: World War One Centennial Commission; General Services Administration.

ACTION: Notice; correction.

SUMMARY: GSA published a notice in the **Federal Register** of Friday, May 28, 2021, announcing a meeting of an upcoming public advisory meeting. The notice contained an incorrect date. This notice corrects that date.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, World War 1 Centennial Commission, 701 Pennsylvania Avenue NW, 123, Washington, DC 20004-2608, at 202-380-0725 (Note: This is not a toll-free number).

Correction

In the **Federal Register** of Friday, May 28, 2021, in FR Doc. 2021-11312, on page 28833, second column, correct the **DATES** section by removing Wednesday, June 23, 2021 and adding Wednesday, July 14, 2021 in its place.

David Coscia,

Agency Liaison Officer, Office of Presidential & Congressional Agency Liaison Services, General Services Administration.

[FR Doc. 2021-12308 Filed 6-10-21; 8:45 am]

BILLING CODE 6820-95-P

GOVERNMENT ACCOUNTABILITY OFFICE

Notice of Estimated Lump Sum Catch-Up Payments to Eligible 9/11 Victims, 9/11 Spouses, and 9/11 Dependents; Request for Comment

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Notice of estimated lump sum catch-up payments; request for comment.

SUMMARY: GAO is now accepting comments on estimated potential lump sum catch-up payments to certain 9/11 victims, 9/11 spouses, and 9/11 dependents who have submitted eligible claims for payment from the United States Victims of State Sponsored Terrorism Fund. GAO is conducting a review and publishing this notice pursuant to the requirements of the Sudan Claims Resolution Act. Comments should be sent to the email address below.

DATES: Interested persons are invited to submit comments on or before July 12, 2021.

ADDRESSES: Submit comments to FundPaymentComments@gao.gov or in writing to Mr. Charles Michael Johnson, Jr. at 441 G Street NW, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Charles Michael Johnson, Jr. at (202)

512-7500 or JohnsonCM@gao.gov if you need additional information. For general information, contact GAO's Office of Public Affairs, 202-512-4800.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2021, GAO published a notice (86 FR 16211) of our methodology for estimating certain lump sum catch-up payments. The supplementary information included with the notice explained that, pursuant to Section 1705 of the Sudan Claims Resolution Act,¹ GAO is conducting a review and publishing notices for estimating potential lump sum catch-up payments to 9/11 victims, 9/11 spouses, and 9/11 dependents² who have eligible claims for payment from the United States Victims of State Sponsored Terrorism Fund (Fund). The Fund, which is administered by a Special Master and supported by Department of Justice (DOJ) personnel,³ was established in 2015 by the Justice for United States Victims of State Sponsored Terrorism Act (Terrorism Act).⁴ In 2019, the United States Victims of State Sponsored Terrorism Fund Clarification Act (Clarification Act) removed language from the Terrorism Act precluding 9/11-related claimants⁵ who received awards from the Victim Compensation Fund (VCF) from receiving payments from the Fund.⁶ However, because 9/11 family members

¹ Public Law 116-260, div. FF, tit. XVII, sec. 1705, 134 Stat. 1182, 3293-3294, amending Public Law 114-113, div. O, tit. IV, sec. 404, 129 Stat. 2242, 3010-3011 (classified as amended at 34 U.S.C. 20144(d)(4)(C)).

² See 34 U.S.C. 20144(j)(10)-(14) (defining the terms "9/11 victim," "9/11 spouse," and "9/11 dependent," among others); see also 28 CFR 104.2, 104.3.

³ See 34 U.S.C. 20144(b)(1).

⁴ Public Law 114-113, div. O, tit. IV, sec. 404, 129 Stat. 2242, 3007-3017 (classified as amended at 34 U.S.C. 20144).

⁵ "Claimants" hold final judgments issued by a United States district court under State or Federal Law against a foreign state that has been designated a state sponsor of terrorism and arising from acts of international terrorism. 34 U.S.C. 20144(c)(2). For purposes of the Fund, the term "claim" generally refers to a claim based on compensatory damages awarded to a United States person in a final judgment issued by a United States district court under State or Federal law against a foreign state that has been designated a state sponsor of terrorism and arising from acts of international terrorism. In general, a claim is determined eligible for payment from the Fund if the Special Master determines that the judgment holder (referred to as a "claimant") is a United States person, that the claim at issue meets the definition of claim above, and that the claim was submitted timely.

⁶ Public Law 116-69, div. B, tit. VII, sec. 1701, 133 Stat. 1134, 1140-1141. The VCF provides compensation to those present at the World Trade Center on September 11, 2001, at other crash sites, or in the New York City Exposure Zone, or their personal representative.

(i.e., immediate family members of 9/11 victims who are not spouses or dependents, such as non-dependent parents and siblings) had not received awards from the VCF, they were not precluded from receiving payments from the Fund if their claims were determined eligible. The first round of payments was distributed in early 2017 and the second round in early 2019.⁷ As of June 2021, the Fund had allocated \$1.075 billion for third-round payments and was in the process of distributing payments on a rolling basis.⁸ According to comments received on our first notice, certain 9/11 victims, spouses, and dependents have worked with members of Congress related to these catch-up payments. While the Terrorism Act, as amended, contains a provision for us to estimate catch-up payments, it does not currently authorize such catch-up payments to be made. The Fund would be responsible for making actual payments if authorized.

Summary of Comments

GAO received a total of 1,925 comments by the closing date of April 26, 2021.⁹ GAO received 1,910 comments from individuals or anonymous commenters and 15 comments from organizations.¹⁰ GAO received about 94 percent of comments by email; the remaining comments were received in voicemails or letters. GAO has carefully considered all comments received. Below is a summary of the types of comments GAO received and GAO's response.

Opposition to Use of Second Round Judgment Date

The great majority of comments received expressed disagreement with the proposed use of September 14, 2018, the close of the application period for the second round of payments, as the date by which claimants must have had a final judgment to be eligible for catch-up payments. Commentators opposing this date raised two consistent arguments for why the date should not be used. First, commentators explained that, because of the statutory bar that

was in place at the time of the first and second rounds of payments from the Fund, the majority of otherwise eligible victims, spouses, and dependents did not seek final damages judgments before September 14, 2018, on the advice of counsel. They explained that such claims for damages would have been frivolous and administratively burdensome given the bar to recovery from the Fund. Second, commentators opposing this date also argued that Congress' intent in passing the Sudan Claims Resolution Act was to provide for the estimation of catch-up payments for 9/11 victims, spouses, and dependents who had received payments from the VCF and had not received payments from the Fund in rounds one or two. Commentators said that by using September 14, 2018 as the cut-off date, GAO would exclude most of this population and underestimate the number of individuals eligible for catch-up payments.

GAO Response: GAO's calculation will now include all eligible claimants who are 9/11 victims, spouses, and dependents who submitted applications by February 19, 2020, the deadline for the third round distribution of the Fund.¹¹ We previously limited the population to those 9/11 victims, spouses and dependents who would have been eligible to receive a payment from the Fund in the first or second round but for the language in the Terrorism Act precluding claimants who received awards from the VCF from receiving payments from the Fund. For that reason, we had planned to limit the population to 9/11 victims, spouses and dependents who had eligible final judgments prior to the close of the application period for the second round of payments, September 14, 2018, and therefore would have been eligible for payment by that time.¹² We based this approach on our understanding of the specific procedures for obtaining payments as set forth in the Terrorism Act and described by DOJ officials supporting the Fund.

GAO revised the population for the purposes of this estimation partially in

response to the arguments raised by commentators opposed to the September 14, 2018 cut-off date explaining the reasons why eligible claimants generally would not have pursued final judgments by this date. In addition, according to GAO's analysis, the Fund's summary data on the dates of certain claimants' final judgments included only the most recent judgment date. According to the DOJ officials that support the Fund, the summary data on these judgments were compiled for internal purposes and not for the purpose of calculating payments to individual claimants. Instead, the Fund reviews each individual claimant's application and documentation when determining eligibility and payment amounts. The limitations of the Fund's summary data on the date of the claimants' final judgments are discussed further in the data limitations section of this notice.

Request To Use the Fund's Payment Percentage in the First and Second Round

GAO received comments about the use of the Fund's payment percentage for our estimation lump sum catch-up payment.¹³ For example, commentators suggested that GAO add the payment percentages calculated by the Fund in the first and second rounds to determine the percentage needed for catch-up payments.

GAO Response: The mandate calls for GAO to estimate potential lump sum catch-up payments in "amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of 9/11 victims, 9/11 spouses, and 9/11 dependents received from the Fund being equal to the percentage of the claims of 9/11 family members received from the fund, [as of the date of enactment]." ¹⁴ Thus,

¹³ The Fund's "payment percentage" is the amount of funds available to pay all eligible claimants in a given round divided by compensatory damages after accounting for the individual and family caps, compensation from other sources, and prior payments from the Fund. The payment percentage for the initial round of payments was 13.6561 percent (generally rounded to 13.66 percent in USVSST Fund communications). The payment percentage for the second round of payments is 4.1955 percent (rounded to 4.2 percent in USVSST Fund communications). The payment percentage total for both rounds is 17.8516 percent, rounded here to 17.85 percent. See U.S. Victims of State Sponsored Terrorism Fund, "Payment Calculation Explanation," at 4 (December 2018).

¹⁴ 34 U.S.C. 20144(d)(4)(C)(i). Further, section 1705 provides for GAO to conduct this audit in accordance with 34 U.S.C. 20144(d)(3)(A), which generally places limits on the amount of eligible claims (referred to as "statutory caps"). For example, for individuals, the cap is generally

⁷ The Fund allocated \$1.1 billion for initial-round payments and \$1.095 billion for second-round payments. See U.S. Victims of State Sponsored Terrorism Fund, "Special Master Report Regarding the Third Distribution," at 2 (June 2020).

⁸ See id.; U.S. Victims of State Sponsored Terrorism Fund, <http://www.usvsst.com> (last accessed June 1, 2021).

⁹ A summary of these comments are captured below; however, some comments fell into multiple categories and are included in all applicable categories.

¹⁰ GAO counted comments received multiple times with the same content and sender as one comment.

¹¹ According to the Fund's June 2020 congressional report, the applications of eligible claimants who applied in rounds one or two are carried forward into subsequent payment rounds. U.S. Victims of State Sponsored Terrorism Fund, "Special Master Report Regarding the Third Distribution," at 2 (June 2020).

¹² As discussed in footnote 5, in general the Fund determines the eligibility of a claim for payment in each round by determining that the claimant holds a final judgment issued by a United States district court under State or Federal Law against a foreign state that has been designated a state sponsor of terrorism and arising from acts of international terrorism and that the claim was submitted timely.

GAO estimated the amount needed to provide potential lump sum catch-up payments so that these payments to 9/11 victims, spouses, and dependents would represent an equal percentage of their net eligible claims as the amounts received by 9/11 family members. GAO did not combine the Fund's payment percentages, which were based on payments to all eligible claimants in each round because the mandate calls for GAO to calculate a specific percentage for these catch-up payments that is based on payments to certain 9/11 claimants only.

Methodology To Produce Estimates for Lump Sum Catch-Up Payments

To estimate the amount(s) called for in the mandate, GAO used data obtained from the Fund on the following amounts: (1) Payments received by 9/11 family members in rounds one and two; (2) net eligible claims¹⁵ of 9/11 family members who received payments in rounds one and two; and (3) net eligible claims of 9/11 victims, spouses, and dependents who have not received payments in rounds one or two. To calculate the first two amounts, GAO identified the population of claimants who were 9/11 family members and received payments in rounds one and two. GAO divided the payments received by 9/11 family members in rounds one and two by the net eligible claims of 9/11 family members who received payments in rounds one and two to calculate the percentage called for in the mandate. To calculate the third amount, GAO calculated the total net eligible claims of 9/11 victims, spouses and dependents who had not received payments in rounds one or two. GAO multiplied the percentage above by the total net eligible claims of 9/11 victims, spouses, and dependents who submitted eligible applications by the February 19, 2020 deadline for the

third round distribution of the Fund.¹⁶ This generated an estimate of the total amount needed to provide lump sum catch-up payments for 9/11 victims, spouses, and dependents.

GAO also calculated the amount needed to provide lump sum catch-up payments by group (*i.e.*, 9/11 victims, spouses, and dependents) utilizing the percentage calculated above.¹⁷ To estimate the average lump sum catch-up payments by individual for each group in our forthcoming report to Congress, GAO will multiply the net eligible claim of each claimant by the same percentage and then calculate the average catch-up payment for individuals within each group.

Data Limitations

In accordance with GAO standards, we assessed the reliability, accuracy, and completeness of the readily available electronic data DOJ provided from the Fund to ensure that it is appropriate for our purposes. Specifically, we reviewed relevant documentation from the Fund, including data on net eligible claims, judgment dates, and payment distributions across three payment rounds, conducted interviews with agency officials, and checked the data for outliers. Our review of the data found it to be sufficiently reliable for the purposes of estimating potential catch-up payments for eligible claimants.

However, with regard to summary data that the Fund provided on the dates of claimants' final judgments, GAO found limitations with the completeness of this data for the purposes of determining which claimants had final judgments prior to September 14, 2018. According to the DOJ officials that support the Fund, the summary data provided by the Fund on these judgments was compiled for internal purposes and not for the purposes of calculating individual payments to individual claimants. Instead, the Fund reviews each

individual claimant's application and documentation when determining eligibility and payment amounts.

The summary data contained information on judgments for each claimant in the third distribution, but for some claimants who had multiple judgments, only the most recent judgment was included as it incorporated the amounts of any prior judgments. For example, a claimant may have received one judgment in 2016 for pain and suffering damages in the amount of \$2 million and then received a second judgment after September 14, 2018, which added an additional \$15 million in economic damages to the previous pain and suffering damages judgment, totaling \$17 million. In that case, DOJ officials supporting the Fund told us that, for their purposes, they only needed to record the most recent judgment and the total amount (in the example about, \$17 million), and thus use of this summary data to determine the population of those eligible for catch-up payments could have resulted in a potential underestimate of eligible claimants. It would not have been practicable for us to conduct a case-by-case review of individual judgments to determine which claimants had multiple judgments, with one prior to the September 14, 2018 date used in our prior notice and one after that date.

Given these limitations, and the arguments raised by commentators opposed to the September 14, 2018 date discussed above, GAO developed a more inclusive estimate that included eligible 9/11 victims, spouses, and dependents from all three payment rounds who did not receive a payment in the first two rounds of the Fund.

Estimates for Lump Sum Catch-up Payments

GAO calculated 3,288 9/11 family members received total payments of \$1,155,264,392 in rounds one and two. The total net eligible claims of these 9/11 family members was \$19,723,494,745. Using these amounts, we calculated the percentage called for in the mandate of 5.8573 percent. We then estimated the 5,364 9/11 victims, spouses, and dependents had total net eligible claims of \$45,287,995,177 and multiplied the 5.8573 percentage to generate \$2,652,653,742, the total amount needed to provide lump sum catch-up payments for 9/11 victims, spouses, and dependents, so that the percentage of net eligible claims received by 9/11 family members is equal to the percentage of net eligible claims received by the 9/11 victims, spouses, and dependents in the population (see Table 1).

\$20,000,000 and for claims of family members when aggregated, the cap is generally \$35,000,000. As such, we used data from the Fund on the claim amounts after the application of statutory caps.

¹⁵ For the purposes of our analysis, "net eligible claims" refers to the monetary amount of all eligible claims after the application of relevant statutory caps by the Fund, if applicable. 34 U.S.C. 20144(d)(3)(A). For example, for individuals, the cap is generally \$20,000,000 and for claims of family members when aggregated, the cap is generally \$35,000,000. To calculate the amount of 9/11 family members' net eligible claims, we used rounds one and two data, the rounds in which the family members' payments were received, from the Fund on the claim amounts after the application of statutory caps. To calculate the amount of 9/11 victims, spouses and dependents' net eligible claims, we used round three data from the Fund on the claim amounts after the application of statutory caps.

¹⁶ The population for which we are estimating "catch-up payments" are 9/11 victims, spouses, and dependents who applied for payments in the first, second, or third round of payments from the Fund and who did not receive payments from the Fund in rounds one or two. See 34 U.S.C. 20144(c), (d)(4)(C); U.S. Victims of State Sponsored Terrorism Fund, "Special Master Report Regarding the Third Distribution," at 2 (June 2020). According to the Fund's June 2020 congressional report, the applications of eligible claimants who applied in rounds one or two are carried forward into subsequent payment rounds. GAO used the amount of net eligible claims calculated in the third round for 9/11 victims, spouses, and dependents.

¹⁷ As noted above, while the Terrorism Act, as amended, contains a provision for us to estimate catch-up payments, it does not currently authorize such catch-up payments to be made.

TABLE 1—ESTIMATED AMOUNT NEEDED TO PROVIDE LUMP SUM CATCH-UP PAYMENTS BY GROUP TO ELIGIBLE 9/11 VICTIMS, SPOUSES, AND DEPENDENTS

Group	Total amount needed to provide lump sum catch-up payments
9/11 Victims	\$811,945,396
9/11 Spouses	859,813,713
9/11 Dependents	980,894,632
Total	2,652,653,742

Authority: Pub. L. 116–260, div. FF, tit. XVII, 1705, 134 Stat. 1182, 3293–3294 (34 U.S.C. 20144(d)(4)(C)).

Charles Michael Johnson, Jr.,
Managing Director, Homeland Security and Justice, U.S. Government Accountability Office.

[FR Doc. 2021–12109 Filed 6–10–21; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0008]

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on July 14, 2021, from 9 a.m. Eastern Time to 6 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability may be accessed at: <https://www.fda.gov/advisory-committees/about-advisory-committees/common-questions-and-answers-about-fda-advisory-committee-meetings>.

FOR FURTHER INFORMATION CONTACT:

James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, James.Swink@fda.hhs.gov, 301–796–6313, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On July 14, 2021, the committee will discuss, make recommendations, and vote on information regarding the premarket approval application (PMA) for the Organ Care System (OCS) Liver System, by TransMedics, Inc. The proposed Indication for Use for the OCS Liver System, as stated in the PMA, is as follows:

The TransMedics® Organ Care System (OCS™) Liver is a portable extracorporeal liver perfusion and monitoring system indicated for the resuscitation, preservation, and assessment of liver allografts from donors after brain death (DBD) or liver allografts from donors after circulatory death (DCD) ≤55 years old in a near-physiologic, normothermic and functioning state intended for a potential transplant recipient.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at <https://www.fda.gov/advisory-committees/medical-devices-advisory-committee/gastroenterology-urology-devices-panel>. Select the link for the 2021 Meeting Materials.

The meeting will include slide presentations with audio components to allow the presentation of materials in a

manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 7, 2021. Oral presentations from the public will be scheduled on July 14, 2021 between approximately 2 p.m. Eastern Time and 3 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 29, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 30, 2021.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Artair Mallett at Artair.Mallett@fda.hhs.gov or 301–796–9638 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/advisory-committees/about-advisory-committees/public-conduct-during-fda-advisory-committee-meetings> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 4, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–12266 Filed 6–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2020-N-2231]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products and Licensed Devices**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 12, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910-0052. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601

Landsdown St., North Bethesda, MD 20852, 301-796-7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products and Licensed Devices—21 CFR Part 607

OMB Control Number 0910-0052—Extension

This information collection supports Agency regulations. Under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, places of business, and all such establishments, among other information and must submit a listing of all drug and device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution, among other information. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human blood and blood products.

The regulations set forth procedures and requirements pertaining to establishment registration and product listing for manufacturers of human blood and blood products and licensed devices, including initial registration, annual registration, product listing updates, and waiver requests. Owners or operators of certain establishments that

engage in the manufacture of blood products shall register and submit a list of every blood product in commercial distribution (§ 607.20(a)). Initial and subsequent registrations and product listings must be submitted electronically through FDA’s Center for Biologics Evaluation and Research (CBER) Blood Establishment Registration and Product Listing system, or any future superseding electronic system, unless FDA has granted a request for waiver of this requirement prior to the date on which the information is due (§ 607.22(a)). Waiver requests must be submitted in writing and must include, among other information, the specific reasons why electronic submission is not reasonable for the registrant (§ 607.22(b)). Establishment registration and product listing information assists FDA in its inspections of facilities, among other uses, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the Nation’s blood supply.

Description of Respondents: Respondents to this collection of information are human blood and plasma donor centers, blood banks, certain transfusion services, other blood product manufacturers, independent laboratories that engage in quality control and testing for registered blood product establishments and manufacturers of devices licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).

In the **Federal Register** of February 18, 2021 (86 FR 10085), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
607.20(a), 607.21, 607.22, 607.25, 607.40; Initial registration	152	1	152	1	152
607.21, 607.22, 607.25, 607.26, 607.31, 607.40; Annual registration	2,557	1	2,557	0.5 (30 minutes)	1,279
607.21, 607.25, 607.30(a), 607.31, 607.40; Product listing update	256	1	256	0.25 (15 minutes)	64
607.22(b); Waiver request	1	1	1	1	1
Total					1,496

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on our evaluation of Fiscal Year 2019 data from CBER’s Blood Establishment Registration and Product Listing system, we have adjusted the currently approved burden estimate we attribute to establishment registration and product listing to reflect a slight

increase in submissions; however, the overall burden has not changed.

Dated: June 3, 2021.

Lauren K. Roth,
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-12259 Filed 6-10-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2019-D-3614]

Recommendations for Sponsors of Medically Important Antimicrobial Drugs Approved for Use in Animals to Voluntarily Bring Under Veterinary Oversight All Products That Continue to be Available as Over-the-Counter; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a final guidance for industry (GFI) #263 entitled “Recommendations for Sponsors of Medically Important Antimicrobial Drugs Approved for Use in Animals to Voluntarily Bring Under Veterinary Oversight All Products That Continue to Be Available as Over-the-Counter.” This guidance document provides information to sponsors of medically important antimicrobial new animal drug products who are interested in changing the approved marketing status of these products from over-the-counter (OTC) to by veterinary prescription (Rx) consistent with FDA’s recommendation that the use of such drugs in animals be limited to uses that include veterinary oversight to mitigate development of antimicrobial resistance. It also establishes timelines for stakeholders wishing to comply voluntarily with this guidance.

DATES: The announcement of the guidance is published in the **Federal Register** on June 11, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note

that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2019-D-3614 for “Recommendations for Sponsors of Medically Important Antimicrobial Drugs Approved for Use in Animals to Voluntarily Bring Under Veterinary Oversight All Products That Continue to Be Available as Over-the-Counter.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV-6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John M. Mussman, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-402-0589, email: john.mussman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 25, 2019 (84 FR 50456), FDA published a notice of availability of a draft guidance entitled “Recommendations for Sponsors of Medically Important Antimicrobial Drugs Approved for Use in Animals to Voluntarily Bring Under Veterinary Oversight All Products That Continue to Be Available Over-the-Counter” giving interested persons until December 24, 2019, to comment on the draft guidance. FDA received comments on the draft guidance, which were considered as the guidance was finalized. Some comments addressed the process outlined in the draft guidance, specifically the proposed timeframe for sponsors to facilitate voluntary changes to the approved conditions of use of these drugs to prescription marketing status. Further, FDA notes that, in general, many of the comments received did not address the

specific process outlined in the draft guidance, but rather addressed support for, or concerns with, the underlying policy of judicious use of medically important antimicrobials in animals, specifically the principle of limiting medically important antimicrobial drugs to uses in animals that include veterinary oversight or consultation. As described in FDA GFI #209, "The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals" (77 FR 22328, April 13, 2012), the development of resistance to this important class of drugs, and the resulting loss of their effectiveness as antimicrobial therapies, poses a serious public health threat. Developing strategies to reduce antimicrobial resistance is critically important for protecting both public and animal health. This guidance is an extension of FDA's ongoing efforts to promote the appropriate or judicious use of medically important antimicrobial drugs in animals.

This guidance provides information to sponsors of new animal drug products containing antimicrobials of human medical importance who are interested in changing the approved marketing status of these products from OTC to Rx with specific recommendations on submission of revised labeling. Such changes are consistent with FDA's recommendation that the use of such antimicrobial drugs in animals include veterinary oversight in order to mitigate development of antimicrobial resistance and thereby preserve the effectiveness of these drugs for use as therapies to treat infections in humans and animals. The guidance also identifies timelines for stakeholders wishing to comply voluntarily with this guidance; these timelines remain as outlined in the draft guidance. In the final guidance, editorial changes were made to improve clarity.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on recommendations for drug sponsors for voluntarily bringing under veterinary oversight all medically important antimicrobial drugs approved for use in animals that continue to be available as OTC products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of

information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in section 512(n)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(n)(1)) have been approved under OMB control number 0910–0669; the collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry> or <https://www.regulations.gov>.

Dated: June 7, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–12297 Filed 6–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–E–2079]

Determination of Regulatory Review Period for Purposes of Patent Extension; BRAVECTO; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA or Agency) published a notice in the **Federal Register** of February 12, 2018. After review of a timely request for reconsideration by the applicant of the determination of the regulatory review period of the animal drug, BRAVECTO, in that notice, FDA has determined that a revision of the **SUPPLEMENTARY INFORMATION** section is warranted. This document presents the revised regulatory review period.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 12, 2018 (83 FR 6033), in FR Doc. 2018–

02761, in the first column, the first two paragraphs under the section "II. Determination of Regulatory Review Period," the following correction is made on page 6034:

FDA has determined that the applicable regulatory review period for BRAVECTO is 1,054 days. Of this time, 1,016 days occurred during the testing phase of the regulatory review period, while 38 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the FD&C Act (21 U.S.C. 360b(j)) became effective:* June 28, 2011. The applicant claims February 19, 2010, as the date the investigational new animal drug application (INAD) became effective. However, after consideration of additional information presented by the applicant in response to the **Federal Register** notice (83 FR 6033), FDA has determined that the start of the testing phase was June 28, 2011, which was the date the first major health or environmental effects test began.

Dated: June 3, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–12284 Filed 6–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1261]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Study of Disclosures to Healthcare Providers Regarding Data That Do Not Support Unapproved Use of an Approved Prescription Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by July 12, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The title of this information collection is “Study of Disclosures to Healthcare Providers Regarding Data That Do Not Support Unapproved Use of an Approved Prescription Drug.” Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Study of Disclosures to Healthcare Providers Regarding Data That Do Not Support Unapproved Use of an Approved Prescription Drug

OMB Control Number 0910–New

I. Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion’s (OPDP’s) mission is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated. OPDP’s research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission. Our research focuses in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and

product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience; and our focus on research quality aims at maximizing the quality of our research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first two topic areas: Advertising features and target populations.

Because we recognize that the strength of data and the confidence in the robust nature of the findings is improved by utilizing the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: <https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm090276.htm>. The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a survey on direct-to-consumer advertisements conducted in 1999.

The revised draft guidance entitled “Distributing Scientific and Medical Publications on Unapproved New Uses—Recommended Practices” (2014; Ref. 1),¹ recommends that scientific and medical journal articles that discuss unapproved uses of approved drug products be disseminated with a representative publication that reaches contrary or different conclusions, when such information exists. Similarly, the draft guidance entitled “Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices” (2011; Ref. 2)¹ recommends that when conclusions of articles or texts that are disseminated in response to an unsolicited request have been specifically called into question by other articles or texts, a firm should disseminate representative publications that reach contrary or different conclusions regarding the use at issue.

Pharmaceutical firms sometimes choose to disseminate publications to healthcare providers (HCPs) that

include data that appear to support an unapproved use of an approved product. At the same time, published data that are not supportive of that unapproved use may also exist. For example, unsupportive published information could describe an increased risk of negative outcomes (*e.g.*, death, relapse) from the unapproved use of the approved product, suggesting that the unapproved use does not have a positive benefit-risk ratio. The purpose of this research is to examine physicians’ perceptions and behavioral intentions about an unapproved new use of an approved prescription drug when made aware of other data that are not supportive of the unapproved use. This research will also evaluate the effectiveness of various disclosure approaches for communicating the unsupportive information. We will use the results of this research to better understand: (1) Physicians’ perceptions of an unapproved use of a prescription drug; (2) physicians’ perceptions about an unapproved use of an approved prescription drug when they are aware of the existence of unsupportive information about it; (3) physicians’ perceptions of disclosures referencing the existence of unsupportive information about that particular use; and (4) to examine the utility and effectiveness of various approaches to the communication of this information. In particular, we plan to examine how different approaches to the communication of unsupportive information affect physicians’ thoughts and attitudes about the unapproved use. Five approaches will be examined: (1) The provision of the unsupportive data in the form of a representative publication; (2) a disclosure that summarizes, rather than provides, the unsupportive data and includes a citation to the representative publication; (3) a disclosure that does not provide or include a summary of the unsupportive data but does acknowledge that unsupportive data exist and includes a citation to the representative publication; (4) a general disclosure that does not provide or include a summary of the unsupportive data but acknowledges unsupportive data *may* exist, without conceding that such data do exist; or (5) nothing—the absence of any presentation of unsupportive data or any disclosure about such data (control condition). We have four research questions:

RQ1: When considering a presentation of data about an unapproved use of an approved drug product, how does the existence of unsupportive data impact physicians’

¹ When final, this guidance will represent the FDA’s current thinking on this topic.

perceptions and intentions with regard to that unapproved use?

RQ2: How does the way in which the existence of unsupportive data is communicated, when the specific data is not presented, impact physicians’ perceptions and intentions with regard to an unapproved use of an approved drug product?

RQ3: How are physicians’ perceptions of and intentions toward an unapproved use of an approved drug product affected by the disclosure of specific unsupportive data versus disclosure statements about data that is not presented?

RQ4: Do other variables (e.g., demographics) have an impact on these effects? These research questions will be examined in two medical conditions.

We plan to conduct one pretest with 180 voluntary adult participants and one main study with 1,600 voluntary adult participants. Participants in the main study will be 510 oncologists in the oncology medical condition and 1,090 primary care physicians in the insomnia² medical condition. All participants will be physicians who engage in patient care at least 50 percent of the time and do not work for a pharmaceutical company, marketing firm, or the Department of Health and Human Services. The gender, race/ethnicity, and ages of the participating physicians will be self-identified by participants. We will aim to include a mix of demographic segments to ensure a diversity of viewpoints and backgrounds. Power analyses were

conducted to ensure adequate sample sizes to detect small to medium effects. The studies will be conducted online. The pretest and main studies will have the same design and will follow the same procedure. The base stimulus in both the pretest and main studies will consist of a sample publication supporting an unapproved use of an approved drug product. Within each medical condition, participants will be randomly assigned to one of five test conditions (see figure 1). Following exposure to the stimuli, they will be asked to complete a questionnaire that assesses comprehension, perceptions, prescribing intentions, and demographics. In the pretest, participants will also answer questions about the study design and questionnaire.

FIGURE 1—STUDY DESIGN

	Accompanied by representative publication with unsupportive data	Accompanied by disclosure with summary of unsupportive data and including a citation for that data	Accompanied by disclosure that unsupportive data exist and including a citation for that data, but without a summary of the unsupportive data	Accompanied by general disclosure that unsupportive data <i>may</i> exist and no citation	No disclosure or material about unsupportive data
Medical Condition 1					
Medical Condition 2					

In the **Federal Register** of July 6, 2020 (85 FR 40300), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two submissions that were PRA-related. Within these submissions FDA received multiple comments that the Agency has addressed below. For brevity, some public comments are paraphrased and, therefore, may not include the exact language used by the commenter. We assure commenters that the entirety of their comments was considered even if not fully captured by our paraphrasing in this document. The following acronyms are used here: HCP = healthcare provider; FDA and “The Agency” = Food and Drug Administration; OPDP = FDA’s Office of Prescription Drug Promotion.

(Comment 1) One comment asserted that FDA has not made the stimuli available for public comment and requested FDA publish a new 60-day notice after these comments have been addressed to give the public another opportunity to review and comment.

(Response 1) We have provided the purpose of the study, the design, the

population of interest, and the questionnaire to individuals upon request. These materials have proven sufficient for public comment and for academic experts to peer review the study successfully. Our full stimuli are under development during the PRA process. We do not make draft stimuli public during this time because of concerns that this may contaminate our participant pool and compromise the research.

(Comment 2) One comment suggested that due to the task of reading the “scientific publication” stimuli and length of the questionnaire, FDA’s estimation of the time it will take to complete the study is too low, and thus the burden of the information collection is inaccurate.

(Response 2) The scientific “publications” in this study are each formatted as a one-page brief report. The text is presented in two columns and has the following headings: Introduction, Methods, Results, Discussion, and Limitations. The survey contains primarily closed-ended questions with Likert scales, and there are five open-ended questions. The

expected time for the study is based on our prior experience conducting studies using similar protocols. We will also test the time during the pretest to ensure we stay within 20 minutes. If we determine the average time for completing the survey is greater than 20 minutes, we will revise the survey prior to fielding the main study.

(Comment 3) One comment asserts this proposed study overlaps with other OPDP research currently in progress and references several studies.

(Response 3) OPDP may conduct concurrent or overlapping studies on similar topics. While the studies referenced by the comment contribute to the evidence base for prescription drug promotion, prior studies had a different focus than the current study. Prior disclosure studies examined the effectiveness of disclosures in increasing understanding of efficacy claims (“Disclosures in Professional and Consumer Prescription Drug Promotion”) and the role of disclosures in mitigating potentially misleading presentations of preliminary or descriptive data about oncology drugs (“Disclosures of Descriptive

² This medical condition was changed from diabetes to insomnia based on cognitive testing.

Presentations in Professional Oncology Prescription Drug Promotion”). The third study mentioned by the comment (“Physician Interpretation of Information About Prescription Drugs in Scientific Publications vs. Promotional Pieces”) investigates how physician perception of professional prescription drug communications is influenced by variations in information context, methodologic rigor of the clinical study, and time pressure.

The current study uses an experimental design to compare various disclosure approaches for communicating unsupportive information about an unapproved new use. The findings of this study will help inform FDA’s understanding about when disclosures about unsupportive data might be useful and what types of information should be included.

(Comment 4) One comment expressed concern that the way in which the proposed research is described in the notice suggests that pharmaceutical firms disseminate supportive data but do not adequately disclose unsupportive data and that this “implied bias” may taint the collection and interpretation of the data.

(Response 4) The sentences referred to in this comment appear in the **Federal Register** notices for the study to provide background and do not suggest that any firms are not following the recommendations in the two guidance documents referenced in that same background section. Rather, the background outlines the current FDA recommendations around disclosure of unsupportive data with these types of communications and the intent of the study to evaluate alternative approaches to the disclosure of unsupportive data. These background statements are not part of the materials that will be provided to study participants. Rather, study instructions tell participants only that they will be reviewing informational material about a prescription drug. No instructional materials provided to participants mention a pharmaceutical manufacturer. Therefore, we do not believe the collection and interpretation of study findings will be tainted or biased.

(Comment 5) One comment suggested deleting or amending all questions about HCPs’ prescribing decisions (Questions 4, 5, 10, 11, 14 to 23) because these decisions are likely to be influenced by many factors and are outside of FDA’s jurisdiction. This comment also asserted Question 10 is biased and worded to suggest that pharmaceutical firms disseminate supportive data but do not adequately

disclose unsupportive data and suggests deleting or amending the question.

(Response 5) As explained earlier, the Public Health Service Act authorizes FDA to conduct research relating to health information, and the FD&C Act authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act. The purpose of the current experimental study is to examine physicians’ perceptions and behavioral intentions about an unapproved new use of an approved prescription drug when made aware of other data that are not supportive of the unapproved use and to evaluate the effectiveness of various disclosure approaches for communicating the unsupportive information. The study is within FDA’s authority, and it will help to inform OPDP’s work to help ensure that prescription drug information is truthful, balanced, and accurately communicated so that HCPs and consumers can make informed decisions.

Questions 4 and 5 were intended to assess the impact of various disclosure manipulations on hypothetical prescribing decisions. Measuring behavioral intention is a common method of assessing knowledge and attitudes. There is substantial theoretical and empirical support for our approach, and strong behavioral intention has been shown to be predictive across a wide range of behaviors, including prescribing (Refs. 3 to 5). Based on the results of cognitive interviews, we have revised the measurement of behavioral intention to the following: “If you were considering prescribing [DRUG] to a patient with [DISEASE], how important would the information in the [DISPLAY FILL] be in your decision making?”

Questions 14 to 23 provide important information to address the research questions for this study, including sources of information for studies that do not support an off-label use as well as what aspects of the study would be most important to prescribers.

Questions 10 and 11 are intended to evaluate whether there is enough information for the participants to make a prescribing decision based on the information in the brief study report and disclosure condition, not to assess the adequacy of pharmaceutical firms’ disclosure of unsupportive data generally. Pharmaceutical firms are not referenced in any study materials, and these questions do not imply anything about their dissemination activities.

(Comment 6) One comment recommended that the stimuli used to

represent publications that reach contrary or different conclusions regarding the unapproved use be held to the same standards as the publication about the unapproved use. The comment suggests that this should include being considered scientifically sound by experts with scientific training and expertise to evaluate the safety or effectiveness of the drug or device.

(Response 6) Both the supportive and unsupportive data provided to study participants either in the form of publications or summary information were reviewed by FDA experts with the requisite scientific training and experience to ensure they are appropriate, realistic, and of similar quality.

(Comment 7) One comment recommended that the disclosure summary include specific information about the study design (*i.e.*, study population and control group, key clinical endpoints (patient outcomes)), statistical significance (*i.e.*, 95 percent confidence interval (CI), hazard ratio (HR) and p value) and other key data needed to determine benefit-risk ratio, and to include the product manufacturer and study sponsor.

(Response 7) The proposed experimental study design includes five conditions to examine disclosure approaches for communicating unsupportive information. One of the five conditions provides study details as recommended by the comment. The other conditions have varying levels of detail about the unsupportive information about the unapproved new use of the prescription drug. There is also a control condition. We have purposely omitted the product manufacturer and study sponsor, as we know from other research this may unduly influence physicians’ beliefs about the quality of the study (Ref. 6).

(Comment 8) One comment suggested the disclosure correlate with the unapproved use described in the brief study report.

(Response 8) We agree with this point. The disclosure and unsupportive data provided to participants are relevant to the unapproved use information participants initially review.

(Comment 9) One comment suggested including hyperlinks to a citation for the data and including a representative publication with unsupportive data. This comment also suggested keeping track of how many study participants utilize the hyperlink.

(Response 9) We developed the stimuli for this study using information from multiple scientific publications. Thus, the content does not represent one particular study, and we are unable

to provide hyperlinks. The revised design suggested in the comment may be a good suggestion for future research.

Several comments suggested changes to the proposed questionnaire.

(Comment 10) One comment suggested the instructions and lack of a “don’t know” response option may lead to forced guessing, which may undermine the utility of the study.

(Response 10) We have deleted Question 10 and revised Question 11 to read, “What additional information, if any, did you need in order to consider prescribing [DRUG] for [DISEASE]?” and deleted the instructions to “give us your best guess on answers you do not know.”

(Comment 11) One comment recommends FDA focus on HCPs’ understanding of the data rather than asking about HCPs’ preference for receiving information (Q19 and Q20).

(Response 11) In response to the comment, we have removed Questions 19 and 20 from the survey. Question 3 (now Q4) assesses physician understanding of the disclosure.

(Comment 12) One comment suggested deleting or revising Questions 6 and 9 because outside influences could skew the results.

(Response 12) We are examining the impact of the various levels of information disclosure on participants’ ratings of how informative they find the information and how likely they would be to search for additional information about the drug. Participants will be randomly assigned to a condition, and any individual differences or potential biases should be spread across experimental conditions. Thus, if we find differences between and among conditions, we can be reasonably certain that the study manipulations caused the differences. In consideration of this comment and feedback from peer reviewers, we have revised Question 6 (now Q7) to read, “If you were considering prescribing [DRUG] for [DISEASE], how useful would the information [DISPLAY FILL] be?”

(Comment 13) One comment suggested deleting or revising Question 8 because it is unclear what it means for information to be “credible” in this context, and assessing credibility is very subjective.

(Response 13) To clarify, this question reads, “How credible is the information presented [DISPLAY FILL]?” where [DISPLAY FILL] in Condition 1 is “on page 2,” in Conditions 2, 3, and 4 is the text of the disclosure condition to which they have been assigned, and in Condition 5 is “the material.” Thus, the information on which participants are being asked to give their opinion is

specified. This question has been used in other studies without difficulty. Cognitive testing did not identify any difficulty with respondents’ understanding of “credible” in this context.

(Comment 14) One comment suggested amending questions that are worded “contradict or do not support” because physicians may view a lack of support (inconclusive findings) as different from contradictory findings.

(Response 14) We did not intend for “do not support” to mean that the findings are inconclusive, although we acknowledge that it could be interpreted in such a way. Our intention was to refer to any findings that do not support the off-label use, such as findings that the drug is not effective for the off-label use or had increased risks. We explored potential confusion by asking separate questions on the concepts of “contradict” and “inconclusive” in cognitive testing. Cognitive testing suggested that respondents generally considered “findings that contradict” and “findings that have inconclusive support” to be very similar concepts. While respondents agreed that the two were technically distinct, they tended to assess the two similarly in this context. To gather additional empirical data, we will retain these as separate items in the pretest.

(Comment 15) One comment suggests many of the questions use unbalanced answer scales and recommends the answer scales should be balanced. For example, it may be difficult for participants to distinguish between “A little” and “Somewhat” or “Very” and “Extremely.” Relatedly, the positive and negative options are not necessarily opposites (e.g., “Agree” or “Disagree”) or parallel in intensity (e.g., “Strongly Agree” or “Strongly Disagree”).

(Response 15) We are not using a bipolar scale measuring opposites. Bipolar scales are typically used when there are two opposing possibilities (e.g., “Strongly Agree” or “Strongly Disagree”). We chose a unipolar scale (e.g., “not at all important” to “extremely important”) because the questions are asking about the relative presence or absence of a quality. In the case of usefulness, for instance, it makes more sense for the scale to begin with the absence of usefulness (“not at all useful”) rather than the opposite of usefulness (“extremely useless”). By beginning with “Not at all,” the order of the scale balances out the unidimensional nature of the question (Ref. 7). In fact, a key advantage of a unipolar scale is that it does not depend on defining opposites. The scale labels (i.e., “Not at all,” “A little,”

“Somewhat,” “Very,” and “Extremely”) have been tested in multiple studies, and evidence shows that participants are able to distinguish between the response options (see, for example, Ref. 8).

(Comment 16) One comment expressed a lack of clarity on how Question 3 could yield interpretable responses and recommended replacing this open-ended question with closed-ended questions.

(Response 16) Open-ended items are often used when the intention is to understand respondents’ comprehension (Ref. 9). By asking respondents to rephrase the disclosure in their own words (as if explaining to a colleague), we can assess whether respondents understand the disclosure language as intended (Ref. 10). The responses to open-ended items are qualitative data and will be analyzed to assess what respondents feel to be key information (information included in their summary), what they feel is extraneous information (information *not* included in their summary), and any information that is confusing or unclear (information summarized incorrectly in the summary).

(Comment 17) One comment suggested adding the following questions to the questionnaire:

1. How often do you research and study off-label uses of approved drugs in a given week? With possible answer choices being “never, rarely, occasionally, frequently.”

2. How often are drug products used off-label in your practice? With possible answer choices being “never, rarely, occasionally, frequently.”

3. Would you prescribe this drug for (unapproved use of an approved drug product)? With possible answer choices being: “yes, no, need more information.”

(Response 17) For the first suggested question, we currently assess frequency of prescribing a drug off label (Q14) and the sources used to learn about off-label uses (old Q15 and old Q16, now Q17, Q18, and Q19). We think this combination of questions adequately covers the concept of how often participants prescribe and look for information about off-label uses. Regarding the response choices, the timeframe of a week is very narrow, and would be difficult to answer for those who prescribe off-label infrequently (e.g., a few times a year). In response to the comment and external peer review comment, we have revised response options for Q14 to be more specific (*once a week or more often, several times each month, several times each*

year, less than once a year, have never prescribed a drug for an off-label use).

For the second suggestion, we agree that the frequency of prescribing within the practice would be useful to capture and have added a question to measure

this. No difficulties were identified with this question during cognitive testing.

For the third suggestion, we agree that this would be a useful measure. In response to this comment and peer review, we have revised the

questionnaire to ask about prescribing likelihood for the specific off-label use.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest screener	290	1	290	0.08 (5 minutes)	23
Pretest completes	180	1	180	0.33 (20 minutes) ..	59
Main study screener	2,526	1	2,526	0.08 (5 minutes)	202
Main study completes, Medical Condition 1	510	1	510	0.33 (20 minutes) ..	168
Main study completes, Medical Condition 2	1,090	1	1,090	0.33 (20 minutes) ..	360
Total	1,600	.....	.....	.....	812

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

- *1. "Distributing Scientific and Medical Publications on Unapproved New Uses—Recommended Practices—Revised Draft Guidance," 2014. <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM387652.pdf>.
- *2. "Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices Draft Guidance," 2011. <https://www.fda.gov/media/82660/download>.
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- *5. Sable M.R., L.R. Schwartz, P.J. Kelly, et al. 2006. "Using the Theory of Reasoned

Action to Explain Physician Intention to Prescribe Emergency Contraception." *Perspectives on Sexual and Reproductive Health*, 38(1), pp. 20–27. <https://www.guttmacher.org/journals/psrh/2006/using-theory-reasoned-action-explain-physician-intention-prescribe>.

6. Kesselheim, A.S., C.T. Robertson, J.A. Myers, et al. 2012. "A Randomized Study of How Physicians Interpret Research Funding Disclosures." *New England Journal of Medicine*, 367(12), pp. 1119–1127.
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Dated: June 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

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BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-N-0371]

Agency Information Collection Activities; Proposed Collection; Comment Request; Accelerated Approval Disclosures on Direct-to-Consumer Prescription Drug Websites

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed study entitled "Accelerated Approval Disclosures on Direct-to-Consumer Prescription Drug websites."

DATES: Submit either electronic or written comments on the collection of information by August 10, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 10, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 10, 2021. Comments received by mail/hand delivery/courier (for written/paper

submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2021-N-0371 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Accelerated Approval Disclosures on Direct-to-Consumer Prescription Drug websites." 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: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-7726, PRASStaff@fda.hhs.gov. The questionnaire is available upon request from DTResearch@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Accelerated Approval Disclosures on Direct-to-Consumer Prescription Drug Websites

OMB Control Number 0910-NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health.

Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the

communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of our research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features, including content and format; and the second topic area, target populations.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: <https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research>. The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a direct-to-consumer (DTC) survey conducted in 1999.

Background

Pursuant to section 506(c) of the FD&C Act (21 U.S.C. 356(c)) and 21 CFR part 314, subpart H (or 21 CFR part 601, subpart E for biological products), FDA may grant accelerated approval to a drug product under section 505(c) of the FD&C Act or a biological product under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)). This pathway enables faster approval of prescription drugs intended to treat serious or life-threatening illnesses. Accelerated approval may be based on a determination that a drug product has an effect on a surrogate endpoint (for example, a blood test result) that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit (*i.e.*, an intermediate clinical endpoint). In approving a drug under the accelerated approval pathway, the severity, rarity, or prevalence of a condition, and the

availability or lack of alternative treatments, are taken into account.

The accelerated approval pathway is limited to certain products intended to treat serious or life-threatening illnesses as there can be “[u]ncertainty about whether clinical benefit will be verified and the possibility of undiscovered risks” (FDA 2014 guidance for industry entitled “Expedited Programs for Serious Conditions—Drugs and Biologics,” available at <https://www.fda.gov/downloads/Drugs/Guidances/UCM358301.pdf>). Sponsors are generally required to conduct post approval studies to verify and describe the predicted clinical benefit, but those confirmatory studies are not complete at the time that the accelerated approval is granted (Ref. 1). In the event that the required post-approval confirmatory studies fail to verify and describe the predicted effect or clinical benefit, a drug’s approval can be withdrawn using expedited procedures.

Under FDA regulations governing physician labeling for prescription drugs, the INDICATIONS AND USAGE section of FDA-approved prescribing information for a drug approved under accelerated approval must include not only the indication (21 CFR 201.57(c)) but also a “succinct description of the limitations of usefulness of the drug and any uncertainty about anticipated clinical benefits . . .” (21 CFR 201.57(c)(2)(i)(B)). In a guidance, FDA recommended that in addition to these required elements, the INDICATIONS AND USAGE section for drugs approved under accelerated approval should generally acknowledge that continued approval for the drug or indication may be contingent on verification and description of clinical benefit in confirmatory trials (FDA 2019 guidance for industry entitled “Labeling for Human Prescription Drug and Biological Products Approved Under the Accelerated Approval Pathway,” available at <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM390058.pdf>).

Some DTC websites have included disclosures about accelerated approval, and of those, many included similar content to that seen in the INDICATIONS AND USAGE section of approved labeling. A content analysis of DTC websites for accelerated approval products found that 21 percent of the disclosures used language directly from the approved physician labeling, 79 percent of the disclosures used at least some medical language, but 27 percent of the websites did not include any disclosure that the products attained

approval through this pathway (Ref. 2). The same analysis found that 84 percent of accelerated approval disclosures on DTC websites mentioned the approval basis, 68 percent mentioned unknown outcomes, and 47 percent mentioned confirmatory trials (Ref. 2).

OPDP recently conducted a general-population study testing the disclosure of FDA accelerated approval information on a DTC prescription drug website (OMB control number 0910–0872—Experimental Study of an Accelerated Approval Disclosure). The study tested a control condition with no disclosure; a disclosure based on wording used in physician labeling, including more complex or technical terminology (physician-labeling disclosure); and a consumer-friendly disclosure drafted using simpler language intended to be suited for that audience (consumer-friendly disclosure). The disclosures had three elements: (1) Approval basis, (2) unknown outcomes, and (3) confirmatory trials. The physician labeling disclosure was “This indication is based on response rate. An improvement in survival or disease-related symptoms has not been established. Continued approval for this indication may be contingent upon verification of clinical benefit in subsequent trials.” The consumer-friendly disclosure was “In a clinical trial, [Drug X] returned blood counts to normal. However, we currently do not know if [Drug X] helps people live longer or feel better. We continue to study [Drug X] in clinical trials to learn more about [Drug X]’s benefits.” We also varied whether the physician-labeling and consumer-friendly disclosures were presented with low or high prominence (varying the size, color, and location of the disclosure). Preliminary results related to the comprehension of the disclosures tested in that study suggest that the consumer-friendly disclosure helped participants understand information related to the drug’s accelerated approval, but that participants’ understanding was low overall.

New Proposed Study

The purpose of the current project is to replicate and extend our prior research through two studies by: (1) Testing the same experimental conditions with a different study population (cancer survivors and cancer caregivers in study 1) and (2) testing additional consumer-friendly disclosures in study 2. Replication is an important part of science and, if confirmation of prior results is seen, can

increase confidence in the results from our first study.

With regard to proposed Study 1, public comments for FDA’s previous accelerated approval disclosure study and other similar FDA studies have suggested conducting studies with people who have been diagnosed with the medical condition or who are caregivers to patients diagnosed with the medical condition that the fictitious drug in the study is intended to treat. Specifically, public comments on the previous study suggested enrolling participants who have been diagnosed with cancer (*i.e.*, cancer survivors) or people who have cared for loved ones with cancer (*i.e.*, cancer caregivers). Because a number of oncology products are granted accelerated approval, cancer survivors and cancer caregivers are more likely to seek out or be exposed to promotion for accelerated approval products than the general population. They may also be more familiar with cancer-related terms and concepts than the general population. Study 1 will involve cancer survivors and cancer caregivers, a different population than our prior study. It will test the “three element” version of the disclosure as noted above. We will also test the prominence of the disclosure (see table 1).

With regard to study 2, public comments on the original study (Docket No. FDA–2018–N–3138) expressed concern that over-disclosure could dissuade consumers from considering accelerated approval products. One public comment specifically suggested removing the “unknown outcomes” element in the consumer-friendly and physician-labeling disclosures. Based on these comments, in study 2, we propose testing four versions of the consumer-friendly disclosure (table 2): The “three

element” version of the consumer-friendly disclosure as well as three other consumer-friendly disclosures that vary with respect to which of these three elements they address. This will allow us to evaluate the impact on participants’ comprehension of the disclosure and perception of the fictitious drug when they view a disclosure with only the approval basis, the approval basis plus information about the unknown outcomes, the approval basis plus information about confirmatory trials, and finally the approval basis plus information about both the unknown outcomes and confirmatory trials. In study 2, the prominence of all the test conditions will be the same and will be the same as the “high prominence” version tested in study 1.

We plan to conduct two pretests not longer than 20 minutes, administered via internet panel, to pilot the main study procedures. We then plan to conduct two main studies not longer than 20 minutes, administered via internet panel. For the pretests and main studies, we will randomly assign the participants to one of the test conditions (see table 1 for the study 1 design and table 2 for the study 2 design). In both studies, participants will view a website for a fictitious oncology prescription drug. After viewing the website, participants will complete a questionnaire that assesses whether participants noticed the disclosure and their understanding of it, as well as perceptions of the drug’s risks and benefits. We will also measure covariates such as demographics and literacy. The questionnaire is available upon request from DTCresearch@fda.hhs.gov.

For study 1, we hypothesize that participants will be more likely to

notice the disclosure when it is presented more, rather than less, prominently. In turn, we expect that participants’ perceptions of the drug are more likely to be affected by the disclosure in the high prominence condition. We also hypothesize that participants will be more likely to notice and understand the disclosure and use it to form their perceptions of the drug if they view the consumer-friendly language. For study 2, we hypothesize that participants will be more likely to understand each accelerated approval concept (*i.e.*, confirmatory trials, unknown outcomes) when the disclosure directly addresses the concept, compared with when the disclosure does not directly address the concept. Finally, we will explore whether the inclusion of the concepts of confirmatory trials and unknown outcomes in the disclosure affects participants’ perceived risk, perceived risk-benefit tradeoff, perceptions of the website, or information-seeking intentions. To test these hypotheses, we will conduct inferential statistical tests such as logistic regression and analysis of variance.

For the pretests and main studies, we plan to recruit individuals who report a diagnosis with any cancer (except for certain non-melanoma skin cancers) for half the sample and individuals who report being a caregiver for someone with a diagnosis with any cancer (except for certain non-melanoma skin cancers) for the other half of the sample. We will exclude individuals who work for the U.S. Department of Health and Human Services or work in the health care, marketing, advertising, or pharmaceutical industries. With the sample sizes described below, we will have sufficient power to detect small-sized effects in the main study (table 3).

TABLE 1—STUDY 1 DESIGN

	High prominence	Low prominence	Absent
Physician-labeling version	Condition 1	Condition 3	Condition 5.
Consumer-friendly version	Condition 2	Condition 4.	

TABLE 2—STUDY 2 DESIGN

	Consumer-friendly disclosure elements			
	Approval basis	Approval basis + unknown outcomes	Approval basis + confirmatory trials	Approval basis + unknown outcomes + confirmatory trials
High prominence	Condition 6	Condition 7	Condition 8	Study 1 Condition 2.

FDA estimates the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest 1 and 2 screener	3,600	1	1	0.08 (5 minutes)	288
Study 1 and 2 screener	20,600	1	1	0.08 (5 minutes)	1,648
Pretest 1	100	1	1	0.33 (20 minutes)	33
Main Study 1	630	1	1	0.33 (20 minutes)	208
Pretest 2	80	1	1	.33 (20 minutes)	26
Main Study 2	400	1	1	0.33 (20 minutes)	132
Total					2,335

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**), and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Beaver J.A., L.J. Howie L.J., L. Pelosof L., et al. "A 25-Year Experience of U.S. Food and Drug Administration Accelerated Approval of Malignant Hematology and Oncology Drugs and Biologics: A Review." *JAMA Oncology*. 2018; 4(6):849–856. doi:10.1001/jamaoncol.2017.5618
2. Sullivan H.W., A.C. O'Donoghue, K.T. David, N.J. Patel. "Disclosing Accelerated Approval on Direct-to-Consumer Prescription Drug Websites." *Pharmacoepidemiology and Drug Safety*. 2018;27:1277–1280. <https://doi.org/10.1002/pds.4664>

Dated: June 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–12264 Filed 6–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0369]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 12, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The OMB control number for this information collection is 0910–0212. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations Under the Federal Import Milk Act (FIMA)—21 CFR Part 1210

OMB Control Number 0910–0212—Extension

This information collection supports FDA regulations. Under FIMA (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit (21 U.S.C. 141). Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50 °F (21 U.S.C. 142).

Our regulations in part 1210 (21 CFR part 1210) implement the provisions of FIMA. Sections 1210.11 and 1210.14 require reports on the sanitary conditions of, respectively, dairy farms and plants producing milk and/or cream to be shipped to the United States. Section 1210.12 requires reports on the physical examination of herds, while § 1210.13 requires the reporting of tuberculin testing of the herds. In addition, the regulations in part 1210 require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and

address (§ 1210.22). Section 1210.20 requires that an application for a permit to ship or transport milk or cream into the United States be made by the actual shipper. Section 1210.23 allows permits to be granted based on certificates from accredited officials.

Description of Respondents:
Respondents include foreign dairy farms and plants engaged in transporting milk and/or cream into the United States. Respondents are from the private sector (for-profit businesses).
In the **Federal Register** of November 4, 2020 (85 FR 70182), FDA published

a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1210.11	1996/Farm Inspection Report	1	200	200	1.5	300
1210.12	1995/Report of Physical Examination of Cows	1	1	1	0.5 (30 minutes)	0.5
1210.13	1994/Report of Tuberculin Tests of Cattle	1	1	1	0.5 (30 minutes)	0.5
1210.14	1997/Score Card for Sanitation Inspections of Milk Plants.	1	1	1	2	2
1210.20	1993/Application for Permit to Ship or Transport Milk and/or Cream into United States.	1	1	1	0.5 (30 minutes)	0.5
1210.23	1815/Certificate/Transmittal for an Application	1	1	1	0.5 (30 minutes)	0.5
Total .....	.....	.....	.....	.....	.....	304

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1210.15 Pasteurization; Equipment and Methods	1	1	1	0.05 (3 minutes)	0.05

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995. In the past, Form FDA 1815 has been submitted in lieu of these forms. Because we have not received any Forms FDA 1994 or 1995 in the last 3 years, we assume no more than 1 will be submitted annually.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by us (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by OMB under the PRA. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of business activities.

Based on a review of the information collection since our last OMB approval, we have decreased our burden estimate. The estimated number of respondents and hours per response are based on our experience with the import milk permit program and the average number of import milk permit holders over the past 3 years. However, we have not received any responses in the last 3 years. Therefore, we estimate that one or fewer to be submitted annually. Although we have not received any responses in the last 3 years, we believe these information collection provisions should be extended to provide for the potential future need for a milk importer.

Dated: June 3, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-12263 Filed 6-10-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2014-N-0987]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for the Collection of Qualitative Data on Tobacco Products and Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 12, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under

Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910–0796. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Clearance for the Collection of Qualitative Data on Tobacco Products and Communications

OMB Control Number 0910–0796—Extension

Under section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), FDA is authorized to conduct educational and public information programs.

In conducting studies relating to the regulation and communications related to tobacco products, FDA will need to employ formative qualitative research, including focus groups, usability testing, and/or indepth interviews (IDIs) to assess knowledge and perceptions about tobacco-related topics with specific target audiences. The information collected will serve three major purposes. First, formative research will provide critical knowledge about target audiences. FDA must first understand people’s knowledge and perceptions about tobacco-related topics prior to developing survey/research questions as well as stimuli for experimental studies. Second, by collecting communications usability information, FDA will be able to serve and respond to the ever-changing demands of consumers of tobacco products. Additionally, we will be able

to determine the best way to present messages. Third, initial testing will allow FDA to assess consumer understanding of survey/research questions and study stimuli. Focus groups and/or IDIs with a sample of the target audience will allow FDA to refine the survey/research questions and study stimuli while they are still in the developmental stage. FDA will collect, and interpret information gathered through this generic clearance in order to: (1) Better understand characteristics of the target audience—its perceptions, knowledge, attitudes, beliefs, and behaviors—and use these in the development of appropriate survey/research questions, study stimuli, or communications; (2) more efficiently and effectively design survey/research questions and study stimuli; and (3) more efficiently and effectively design experimental studies.

FDA is requesting approval of an extension of this generic clearance for collecting information using qualitative methods (*i.e.*, individual interviews, small group discussions, and focus groups) for studies involving all tobacco products regulated by FDA. This information will be used as a first step to explore concepts of interest and assist in the development of quantitative study proposals, complementing other important research efforts in the Agency. This information may also be used to help identify and develop communication messages, which may be used in education campaigns. Focus groups play an important role in gathering information because they allow for an indepth understanding of individuals’ attitudes, beliefs, motivations, and feelings. Focus group research serves the narrowly defined need for direct and informal public opinion on a specific topic.

The number of respondents to be included in each new pretest may vary, depending on the nature of the material or message being tested and the target audience. Table 1 provides examples of the types of studies that may be administered and estimated burden

levels during the 3-year period. Time to read, view, or listen to the message being tested is built into the “Hours per Response” figures. Our estimated burden for the information collection reflects an overall increase of 5,641 hours and a corresponding increase of 16,585 responses. We attribute this adjustment to the number of study responses used during the current approval and now estimated for the next 3 years.

In the **Federal Register** of September 29, 2020 (85 FR 60999), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two comments; however, only one was PRA-related.

(Comment) The comment expressed support for FDA’s collection of qualitative research on tobacco products. The comment stated further that while FDA indicates that this research will meet the “narrowly defined need for direct and informal public opinion on a specific topic,” the Agency has recently used this work for broader purposes, including informing the Proposed Rule for graphic health warnings.”

(Response) FDA appreciates the support for conducting qualitative research on tobacco products. FDA disagrees with the comment suggesting that the Agency has used its qualitative generic collection for “broader purposes” than contemplated by the generic collection. Review of a generic collection occurs in two stages: (1) A full PRA review of the generic clearance ICR, which includes the general approach and methodology, at least once every 3 years and (2) an expedited review of the individual collections that fall within the scope of the generic clearance. OMB reviewed the individual collection[s] that this comment cites and approved the collection, having determined that it was appropriately within the scope of the generic clearance.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Type of interview	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
In-Person Individual IDIs	1,092	1	1,092	1	1,092
IDI Screener	1,800	1	1,800	0.083 (5 minutes)	150
Focus Group Screener	19,385	1	19,385	0.25 (15 minutes)	4,846
Focus Group Interviews	5,897	1	5,897	1.5	8,846
Total					14,934

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-12256 Filed 6-10-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the COVID-19 Health Equity Task Force

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the COVID-19 Health Equity Task Force (Task Force) will hold a virtual meeting on June 25, 2021. The purpose of this meeting is to consider interim recommendations addressing the inequities and the impact of long-COVID or Post-Acute Sequelae of SARS-CoV-2 infection (PASC), and access to personal protection equipment, testing, and therapeutics that are related to this pandemic. This meeting is open to the public and will be live-streamed at www.hhs.gov/live. Information about the meeting will be posted on the HHS Office of Minority Health website:

www.minorityhealth.hhs.gov/healthequitytaskforce/ prior to the meeting.

DATES: The Task Force meeting will be held on Friday, June 25, 2021, from 2 p.m. to approximately 6 p.m. ET (date and time are tentative and subject to change). The confirmed time and agenda will be posted on the COVID-19 Health Equity Task Force web page: www.minorityhealth.hhs.gov/healthequitytaskforce/ when this information becomes available.

FOR FURTHER INFORMATION CONTACT: Samuel Wu, Designated Federal Officer for the Task Force; Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852. Phone: 240-453-6160; email: COVID19HETF@hhs.gov.

SUPPLEMENTARY INFORMATION:

Background: The COVID-19 Health Equity Task Force (Task Force) was established by Executive Order 13995, dated January 21, 2021. The Task Force is tasked with providing specific recommendations to the President, through the Coordinator of the COVID-

19 Response and Counselor to the President (COVID-19 Response Coordinator), for mitigating the health inequities caused or exacerbated by the COVID-19 pandemic and for preventing such inequities in the future. The Task Force shall submit a final report to the COVID-19 Response Coordinator addressing any ongoing health inequities faced by COVID-19 survivors that may merit a public health response, describing the factors that contributed to disparities in COVID-19 outcomes, and recommending actions to combat such disparities in future pandemic responses.

The meeting is open to the public and will be live-streamed at www.hhs.gov/live. No registration is required. A public comment session will be held during the meeting. Pre-registration is required to provide public comment during the meeting. To pre-register, please send an email to COVID19HETF@hhs.gov and include your name, title, and organization by close of business on Friday, June 18, 2021. Comments will be limited to no more than three minutes per speaker and should be pertinent to the meeting discussion. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute-taking purposes. If you decide you would like to provide public comment but do not pre-register, you may submit your written statement by emailing COVID19HETF@hhs.gov no later than close of business on Thursday, July 1, 2021. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact: COVID19HETF@hhs.gov and reference this meeting. Requests for special accommodations should be made at least 10 business days prior to the meeting.

Dated: June 8, 2021.

Samuel Wu,

Designated Federal Officer, COVID-19 Health Equity Task Force.

[FR Doc. 2021-12320 Filed 6-10-21; 8:45 am]

BILLING CODE 4150-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 of Nursing Research Initial Review Group.

Date: June 24-25, 2021.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Suite 703H, Bethesda, MD 20892, (301) 827-1499, cheryl.nordstrom@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 7, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12234 Filed 6-10-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Multi-Omics Studies for Osteoporosis.

Date: July 9, 2021.

Time: 12:00 p.m. to 3:30 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: Isis S. Mikhail, MD, MPH, DrPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, Tel: 301-402-7704, mikhaili@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 7, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12235 Filed 6-10-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 of Mental Health Special Emphasis Panel; Pathway to Independence Awards (K99/R00).

Date: July 7, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, NSC 6152B, Bethesda, MD 20892, 301-402-8152, erin.gray@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 7, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12233 Filed 6-10-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0114]

Crewman's Landing Permit (CBP Form I-95)

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than August 10, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0114 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at

877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crewman's Landing Permit.

OMB Number: 1651-0114.

Form Number: CBP Form I-95.

Current Actions: Extension.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form I-95, *Crewman's Landing Permit*, is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for non-immigrant crewmembers applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each non-immigrant crewmember on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I-95 serves as the physical evidence that a non-immigrant crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmembers arriving by vessel or air. CBP Form I-95 is authorized by Section 252 of the Immigration and Nationality

Act (8 U.S.C. 1282) and is accessible at: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Nov/CEBP%20Form%20I-95.pdf>.

Type of Information Collection: CBP Form I-95.

Estimated Number of Respondents: 433,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 433,000.

Estimated Time per Response: 0.067 Hours.

Estimated Total Annual Burden Hours: 29,011.

Dated: June 8, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021-12305 Filed 6-10-21; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-MB-2021-N030; FF09M28100, FXMB1231092MFR0, 212; OMB Control Number 1018-New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Online Eastern Population Sandhill Crane Survey Data Entry Portal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 12, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to Info_Coll@fws.gov. Please reference “1018—Sandhill Cranes” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT:

Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358-2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance. You may also view the information collection request (ICR) at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On January 4, 2021, we published in the *Federal Register* (86 FR 116) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on March 5, 2021. We received one comment, which did not address the information collection requirements. Therefore, no response was required.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of

public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703-712) designates the Department of the Interior as the primary agency responsible for managing migratory bird populations frequenting the United States and setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The Service's fall survey for eastern population sandhill crane was established in 1979. It is implemented by State and Federal agencies and public volunteers from eight States in the Atlantic and Mississippi Flyways, as well as Ontario, Canada. Sandhill cranes are widely dispersed during the breeding and wintering seasons and are difficult to count. The optimal time to survey cranes is during the last week of October, when the majority of eastern population cranes breeding in Canada migrate to traditional staging grounds in the Great Lake States (*e.g.*, Jasper-Pulaski Fish and Wildlife Area, Medaryville, Indiana). Since the initial survey in 1979, crane numbers have increased to over 90,000 birds.

The information collected through this survey is vital in assessing the relative changes in the geographic distribution of the species. We use the information primarily to inform managers of changes in sandhill crane distribution and population trends. Without information on the population's status, we might promulgate hunting regulations that:

- Are not sufficiently restrictive, which could cause harm to the sandhill crane population, or
- Are too restrictive, which would unduly restrict recreational opportunities afforded by sandhill crane hunting.

Notifications for the survey are sent to volunteers, and data results are entered into the data portal in order to calculate numbers of sandhill cranes. This survey is conducted via an online survey platform to reduce cost, improve data quality, and decrease respondent burden. This survey has no statistical

design. We collect the following information in conjunction with the account setup process and survey data submission:

- Account setup process:
 - Email address,
 - Username,
 - Photo (optional),
 - Option for other users to contact the registrant,
 - Time zone,
 - First and last name,
 - Phone number, and
 - Start date.
- Survey data submission:
 - Data submission location via online map,
 - Date and time of observation,
 - Number of cranes,
 - Method (ground count or point count),
 - Habitat (agricultural field, sandbar, wetland, or mixed-wetland agricultural field), and
 - Any additional notes the user would like to submit.

We received OMB approval to conduct usability testing of the data entry portal in 2019 under Interior's generic clearance process "DOI Generic 'Fast Track' Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" (OMB Control No. 1090-0011). After conducting the usability testing of the data entry portal for 1 year, we are now ready to seek OMB's full approval of this information collection under the PRA.

Title of Collection: Online Eastern Population Sandhill Crane Survey Data Entry Portal.

OMB Control Number: 1018-New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public:

Individuals and State agencies.

Total Estimated Number of Annual Respondents: 112.

Total Estimated Number of Annual Responses: 157.

Estimated Completion Time per Response: Varies from 3 minutes to 5 minutes, depending on activity.

Total Estimated Number of Annual Burden Hours: 11.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time for the initial registration, and on occasion for survey submission.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: June 8, 2021.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021-12288 Filed 6-10-21; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R6-ES-2020-N026;
FXES11130600000-201-FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments by July 12, 2021.

ADDRESSES:

Document availability and comment submission: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.*, TE123456):

- *Email:* permitsR6ES@fws.gov.
- *U.S. Mail:* Marjorie Nelson, Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT:

Kathy Konishi, Recovery Permits Coordinator, Ecological Services, 303-236-4224 (phone), or permitsR6ES@fws.gov (email). Individuals who are

hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, and Federal agencies; Tribes; and the public to submit written data, view, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant	Species	Location	Take activity	Permit action
TE054237-4	U.S. Forest Service, Rocky Mountain Region, Lake-wood, CO.	- Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>). - Uncompahgre fritillary butterfly (<i>Boloria acrocnema</i>).	CO	Pursue to survey, capture, banding, presence/absence surveys.	Amend/renew.
PER0004552	U.S. National Park Service, Zion National Park, Springdale, UT.	- Shivwits milkwetch (<i>Astragalus ampullarioides</i>). - Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	UT	Remove and reduce to possession; seeds, fruits, tissue, and voucher specimens; presence/absence surveys.	Amend/renew.
PER0005119	U.S. National Park Service Heartland Network, Republic, MO.	Topeka shiner (<i>Notropis topeka</i>).	KS, MO	Harass by survey/monitor, capture, handle.	Amend/renew.
CS0076731	University of Nebraska-Lincoln, Lincoln, NE.	- Indiana bat (<i>Myotis sodalis</i>). - Gray bat (<i>Myotis grisescens</i>). - Ozark big-eared bat (<i>Corynorhinus townsendii ingens</i>).	AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TA, TX, VT, VA, WV, WI, WY.	Capture with mist-nets and harp traps, handle, band.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Small,

Assistant Regional Director, U.S. Fish and Wildlife Service Department of the Interior Unified Regions 5 and 7.

[FR Doc. 2021-12262 Filed 6-10-21; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2020-N150; FXES11130000-212-FF08E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for *Cirsium scariosum* var. *loncholepis* (La Graciosa thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Recovery Plan for *Cirsium scariosum* var. *loncholepis* (La Graciosa thistle) for public review and comment. The draft recovery plan includes objective, measurable criteria, and site-specific management actions as may be necessary to ameliorate threats, such that the species can be removed from the Federal List of Endangered and Threatened Plants.

DATES: We must receive any comments on the draft recovery plan on or before July 12, 2021.

ADDRESSES: *Document availability:* You may obtain a copy of the recovery plan from our website at <http://www.fws.gov/endangered/species/recovery-plans.html>. Alternatively, you may contact the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805-644-1766).

Comment submission: If you wish to comment on the draft recovery plan, you may submit your comments in writing by any one of the following methods:

- *U.S. mail:* Field Supervisor, at the above address; or
- *Email:* r8ventura-recoverycomments@fws.gov.

For additional information about submitting comments, see the Request for Public Comments section below.

FOR FURTHER INFORMATION CONTACT: Steve Henry, Field Supervisor, at the above street address above or telephone 805-644-1766.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer necessary under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

Pursuant to section 4(f) of the Act, a recovery plan must, to the maximum extent practicable, include (1) a description of site-specific management actions as may be necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would support a determination under section 4(a)(1) that the species should be removed from the List of Endangered and Threatened Species; and (3) estimates of the time and costs required to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

The Service has revised its approach to recovery planning; the revised process is called Recovery Planning and Implementation (RPI). The RPI process is intended to reduce the time needed to develop and implement recovery

plans, increase recovery plan relevancy over a longer timeframe, and add flexibility to recovery plans so they can be easily adjusted to accommodate new information or circumstances. Under RPI, a recovery plan will include statutorily required elements (objective, measurable criteria; site-specific management actions; and estimates of time and costs), along with a concise introduction and our strategy for how we plan to achieve species recovery. The RPI recovery plan is supported by a separate Species Status Assessment, or in some cases, a species biological report that provides the background information and threat assessment, which are key to recovery plan development. The essential component to flexible implementation under RPI is producing a separate working document called the Recovery Implementation Strategy (implementation strategy). The implementation strategy steps down from the more general description of actions described in the recovery plan to detail the specific, near-term activities needed to implement the recovery plan. The implementation strategy is adaptable, so that new information can easily be incorporated without having to concurrently revise the recovery plan, unless changes to the statutory elements are required.

The Service listed *Cirsium scariosum* var. *loncholepis* (La Graciosa thistle) as endangered in 2000 (65 FR 14888), and critical habitat was revised for the species in 2009 (74 FR 56978). *Cirsium scariosum* var. *loncholepis* is considered to be a biennial or short-lived perennial species, but has proven to be an annual under certain environmental conditions. The species is in the Asteraceae (daisy and sunflower) family and is restricted to coastal dune wetland, marsh and riparian habitats on sandy soils, along a small portion of the Central Coast of California. Its current geographic range is restricted to several sites within the Guadalupe-Nipomo Dunes Complex located in southwestern San Luis Obispo and northwestern Santa Barbara Counties.

Cirsium scariosum var. *loncholepis* occurs in wetland habitats with sandy soils, within arid and semiarid landscapes, including coastal dune wetlands, lakes, marshes, ponds, seeps and swales. It also occurs along the upper margins and floodplains of intermittent and perennial coastal streams within its range. Most occurrences are associated with wetland features scattered throughout the backdunes of two coastal sand dune complexes; the Callender Dunes, which are located south of the City of Arroyo

Grande, and the contiguous Guadalupe Dunes that are found immediately north of the Santa Maria River.

Characteristically, these coastal dune wetlands occur where the groundwater table is at or near the surface and the local hydrology varies annually with seasonal rainfall.

The primary threats the species include (1) reduced water/lack of water, with groundwater decline as the likely major cause, along with hydrological alteration and climate change, including severe drought and increased temperatures (Factors A and E), and (2) flooding resulting from hydrological alteration (Factor A). Several other threats also affect the species, with the most notable being stochastic events (Factor E), reproductive failure due to a variety of issues, including inbreeding and other genetic factors associated with small population size (Factor E), invasive species (Factor E), and loss of connectivity among occurrences and between populations (Factor E).

Recovery Strategy

The purpose of a recovery plan is to provide a framework for the recovery of a species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species is warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

The goal of this recovery plan is to control or ameliorate impacts from current threats to *Cirsium scariosum* var. *loncholepis* such that the taxon no longer requires protections afforded by the Act and, therefore, warrants delisting. The site-specific management actions identified in the draft recovery plan are as follows:

1. Habitat restoration at all extant sites, which may include invasive weed treatments, woody debris removal, and renovation of local hydrologic regimes.
2. Supplemental watering when necessary during drought or lack of water, specifically to ensure survival of particular individual plants and/or colonies.
3. Installation of exclusionary fencing and/or cages around individuals and colonies to prevent herbivory from mammals.
4. Propagation and outplanting at locations that are extirpated, that have extremely low numbers of individuals and could become extirpated, or at

appropriate sites located within close proximity to the extant occurrences.

5. Annual monitoring and reporting to assess the effectiveness of the near-term actions, track and census the numbers of individuals at each occurrence and to both guide and determine future recovery actions.

6. Establish and maintain a conservation seed bank at a facility that is certified by the Center for Plant Conservation.

7. Conduct research to evaluate the seed viability and pursue efforts to bulk the seed for outplanting.

8. Facilitate outplanting efforts at numerous sites that are likely to have cooperative recovery partners based on the current land ownership status and land use practices and/or that are conducive to these efforts because conservation easements are already established.

9. Continue attempts to gain access to other sites and occurrences within the historic range to conduct census surveys and assessments for potentially suitable habitat for additional outplanting efforts.

10. Fulfill research needs, including the following: Best management practices and methods for the various life stages of the species; species response to disturbance from grazing, to thatch removal and to other vegetation management techniques; demographic studies, pollination ecology research, genetics research, habitat suitability analyses and modeling, groundwater testing and mapping and other hydrologic modeling for evaluating variable climate change scenarios.

Request for Public Comments

We request written comments on the draft recovery plan described in this notice. All comments received by the date specified in **DATES** will be considered in development of a final recovery plan for *Cirsium scariosum* var. *loncholepis*. You may submit written comments and information by mail, email, or in person to the Ventura Fish and Wildlife Office at the above address (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We developed this recovery plan and publish this notice under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f).

Martha Maciel,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2021-12304 Filed 6-10-21; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-HQ-MB-2021-N159; FF09M20200 FGMB123109CITY0 (212); OMB Control Number 1018-NEW]

Agency Information Collection Activities; Urban Bird Treaty Program Requirements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the United States Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 10, 2021.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number "1018-UBT" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358-2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Urban Bird Treaty Program (UBT Program) is administered through the Service's Migratory Bird Program, under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e). The UBT Program aims to support partnerships of public and private organizations and individuals working to conserve migratory birds and their habitats in urban areas for the benefit of these species and the people that live in urban areas. The UBT partners' habitat conservation activities help to ensure that more natural areas, including forests, grasslands, wetlands, and

meadows, are available in urban areas, so that underserved communities can have improved access to green space and opportunities to engage in habitat restoration and community science as well as bird-related recreation and educational programs. These habitat restoration activities, especially urban forest conservation, also contribute to climate resiliency by reducing the amount of carbon dioxide in the atmosphere. Lights-out programs in UBT cities help reduce energy costs and greenhouse gas emissions by reducing the use of electricity when people and businesses turn off their lights between dusk and dawn during the fall and spring periods of bird migration in order to reduce bird collisions with building glass.

The Service designates Urban Bird Treaty cities or municipalities through a process in which applicants submit a nomination package, including a letter of intention and an implementation plan, for approval by the Service's Migratory Bird Program. Within 3 months, the Service reviews the package, makes any necessary recommendations for changes, and then decides to either approve or reject the package. If rejected, the city can reapply the following year. In most cases, when the Service designates a new city partner, the Service and the new city partner hold a signing ceremony, during which a representative from both the Service and the city sign a nonbinding document that states the importance of conserving birds and their habitats to the health and well-being of people that live in and visit the city. To maintain this city partner designation, the city must submit information on the activities it has carried out to meet the goals of the UBT program, including those related to bird habitat conservation, bird hazard reduction, and bird-related community education and engagement. By helping make cities healthier places for birds and people, the UBT Program contributes to the Administration's priorities of justice and racial equity, climate resiliency, and the President's Executive Order 14008 to protect 30 percent of the Nation's land and 30 percent of its ocean areas by 2030.

The UBT program benefits city partners in many ways, including:

- Helps city partners achieve their goals for making cities healthier places for birds and people.
- Provides opportunities to share and learn from other city partners' tools, tactics, successes, and challenges, to advance city partners' urban bird conservation efforts.

- Strengthens the cohesion and effectiveness of the partnerships by coming together and working under the banner of the UBT program.

- Gives city partners improved access to funding through the National Fish and Wildlife Foundation's Five Star and Urban Waters Restoration grant program, as UBT cities receive priority in this program.

- Helps partners garner additional funds through other urban conservation grant programs that have shared goals and objectives.

- Achieve green building credits, reduced energy costs, green space requirements, environmental equity, and other sustainability goals.

- Promotes the livability and sustainability of partner cities by spreading the word about the city's UBT Federal designation and all the benefits of a green and bird-friendly city.

We collect the following information from prospective and successful applicants in conjunction with the UBT Program:

- Nomination Letter—Prospective applicants must submit a letter of intention from the city's partnership that details its commitment to urban bird conservation and community engagement in bird-related education, recreation, conservation, science, and monitoring. Support and involvement by the city government is required.

- Implementation Plan—The required implementation plan should contain the following (see the UBT Program Guidebook—<https://www.fws.gov/migratorybirds/pdf/grants/UrbanBirdTreatyV3.pdf>—for full descriptions of requirements):

- Detailed description of the importance of the city to migrating, nesting, and overwintering birds; bird habitats; human population size of the city; and socioeconomic profile of the

human communities present and those targeted for education and engagement programs.

- Map of the geographic area that is being nominated for designation.
- List of individuals and organizations, and their contact information, that are active in the partnership.
- The mission, goals, and objectives of the partnership applying for designation, organized by the three UBT goal categories.
- Description of accomplishments (e.g., activities, products, outcomes) that have been completed over the last 3 years, the audiences and communities reached/engaged through those activities, and the partner organizations that have achieved them, organized by UBT goal categories.
- Description of strategies, actions, tools/products that are being planned for the next 5 years under the UBT designation, the objectives to be accomplished, the audiences and communities targeted for engagement, and the partners who will complete the work, organized by UBT goal categories.

- Ad Hoc Reports—The Service will also request information updates on UBT city points of contact, activities and events, and other information on an ongoing basis for urban bird conservation in the city, as needed by the Service for storytelling, promotion, and internal programmatic communications, education, and outreach.

- Biennial Reporting—The Service requires city partners to provide biennial metrics as well as written and photographic descriptions of activities for each goal category. City partners are required to submit this information to maintain their city's designation by

ensuring that they are actively working to achieve the goals of the UBT Program.

We will use the information collected for storytelling purposes to promote the urban bird conservation work of city partners, and to enable the Migratory Bird Program to develop UBT Program accomplishment reports and other communications tools to share with the public and the conservation community at large. The reporting requirement ensures that the UBT city designation is meaningful and that city partners are accountable for the efforts that they agreed to undertake to earn their designation. Additionally, we will use the information to promote the UBT program to other interested city partners and the benefits of urban bird conservation generally. For more information, please see the UBT Program Guidebook at the following link: <https://www.fws.gov/migratorybirds/pdf/grants/UrbanBirdTreatyV3.pdf>.

Title of Collection: Urban Bird Treaty Designation, Updates, and Reporting Requirements.

OMB Control Number: 1018–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public:

Nonprofits; colleges, universities, and schools; museums, zoos, and aquaria; local community groups; private businesses; and municipal, State, and Tribal governments involved in urban bird conservation in UBT cities.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One-time submission of nomination letter; one-time submission of implementation plan; on occasion for information updates; and biennial reporting.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours
<i>Nomination Letter:</i>					
Private Sector	6	3	3	4	12
Government	3	3	3	4	12
<i>Implementation Plan (Initial Submission):</i>					
Private Sector	24	3	3	40	960
Government	12	3	3	20	240
<i>Ad Hoc Reports:</i>					
Private Sector	25	4	4	3	75
Government	5	4	4	3	15
<i>Biennial Reporting:</i>					
Private Sector	12	1	12	80	960
Government	3	1	3	80	240
<i>Totals:</i>	90	.....	35	.....	2,514

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: June 8, 2021.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021-12289 Filed 6-10-21; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06000.51010000.ER0000.
LVRWB19B6340.19X5017AP.CACA56753]

Notice of Availability of the Whitewater River Groundwater Replenishment Facility Project Draft Environmental Impact Statement, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Whitewater River Groundwater Replenishment Facility Project (Project), and by this notice is announcing the opening of a 45-day public comment period.

DATES: To ensure that all comments will be considered, the BLM must receive written comments on the Draft EIS within 45 days following the date that the EPA publishes its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs every Friday. The BLM will announce future meetings and any other public involvement activities at least 15 days in advance through public notices, news releases, the project website, and/or mailings.

ADDRESSES: The public may submit comments related to the project during the public comment period by using any of the following methods:

- *Project Website:* <https://go.usa.gov/x6xUc>.

- *Email:* BLM_CA_WhitewaterRecharge@blm.gov.

- *Mail:* Whitewater River Groundwater Replenishment Facility Project, Bureau of Land Management

Palm Springs—South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262.

Copies of the Draft EIS are available for viewing electronically on the project website.

FOR FURTHER INFORMATION CONTACT:

Miriam Liberatore, BLM project manager, telephone: (541) 618-2412; email: mliberat@blm.gov; address Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504.

Persons who use telecommunication devices for the deaf may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Ms. Liberatore 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 Coachella Valley Water District (CVWD) seeks a right-of-way (ROW) grant from the BLM for its existing groundwater replenishment facility in North Palm Springs that is partially located on public lands managed by the BLM. The existing facility consists of water control berms, intake structures, conveyance structures, and 19 infiltration ponds over approximately 690 acres of BLM-managed public lands. The facility also includes 1,480 acres of lands held by CVWD. No new construction and no change in operations are proposed. The change in volume represents CVWD's request that the BLM analyze environmental impacts for the full annual capacity of the facility, instead of the anticipated water allotments, as was done for the previous grant. The change in acreage represents CVWD's request to authorize the use of public lands for water control berms upstream of its intake structure.

The BLM is the lead agency under NEPA and will make Federal decisions regarding the proposed plan amendment and the ROW for the Project. The U.S. Fish and Wildlife Service is a Cooperating Agency and will issue a Biological Opinion for the project. The United States Bureau of Indian Affairs, Agua Caliente Band of Cahuilla Indians, Desert Water Agency, and Metropolitan Water District of Southern California are Cooperating Agencies in this environmental review, but do not have direct permitting roles in the project.

The Proposed Action (Alternative 1) would authorize the facility in its existing configuration and would review the environmental impacts of infiltrating up to 511,000 acre-feet per year, representing the maximum physical capacity of the facility. In addition to the Proposed Action, the Draft EIS considers a no action

alternative and three action alternatives. Alternative 2 (Partial Implementation) would authorize only the area of public lands on which the water control structures upstream of the intake are located. Alternative 3 (Reduced Volume) would authorize the same facility as described under Alternative 1 but the environmental review would be based on an annual infiltration volume of 220,000 acre-feet per year. Alternative 4 (Land Disposal) would authorize the sale or exchange of the public lands within the project footprint and would authorize the facility operation on public lands for a period of 10 years, sufficient to implement the disposal. Alternative 5 (No Action) would not authorize those portions of the facility that are located on public lands. Those portions would be removed, and the public lands rehabilitated. Alternative 1 is the BLM preferred alternative.

Public input on these alternatives or other issues is important and will be considered in the development of the Final EIS.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2)

Karen E. Mouritsen,

California State Director.

[FR Doc. 2021-12075 Filed 6-10-21; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-DTS#-32072;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before May 29, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by June 28, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line “Public Comment on <property or proposed district name, (County) State>.” If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov*, 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 29, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARIZONA

Maricopa County

Glaus House, 6330 East McDonald Dr., Paradise Valley, SG100006706

CALIFORNIA

San Diego County

Munk, Walter and Judith, House, 9530 La Jolla Shores Dr., San Diego, SG100006710

COLORADO

Arapahoe County

Englewood I.O.O.F. Lodge No. 138 Building, 3421, 3425 and 3427 South Broadway, Englewood, SG100006716

MONTANA

Yellowstone County

Billings Communal Mausoleum, 1704 Central Ave., Billings, SG100006704

OREGON

Multnomah County

Montgomery Ward & Company (Boundary Decrease II), 2741 NW Vaughn St., Portland, BC100006705

TENNESSEE

Coffee County

T–201 Aircraft Hangar, 707 William Northern Blvd., Tullahoma, SG100006711

Hamilton County

Price-Evans Foundry, 901 South Holtzclaw Ave., Chattanooga, SG100006713
Beck Knob Cemetery, 875 Dartmouth St., Chattanooga, SG100006714

Marion County

Big Hill Fire Lookout Tower, (Tennessee Division of Forestry Fire Lookout Towers MPS), 1657 Lower Fire Tower Rd., Sequatchie vicinity, MP100006708

Overton County

Twinton Fire Lookout Tower, (Tennessee Division of Forestry Fire Lookout Towers MPS), Threet Rd., Crawford vicinity, MP100006707

Shelby County

Overton Park Court Apartments, (Residential Resources of Memphis MPS), 2095 Poplar Ave., Memphis, MP100006712

Union County

Chuck Swan Fire Lookout Tower, (Tennessee Division of Forestry Fire Lookout Towers MPS), Main Forest Rd., Sharps Chapel vicinity, MP100006709

UTAH

Davis County

Cheney, Leroy and Alice, House, (Centerville MPS), 676 North Main St., Centerville, MP100006718

Salt Lake County

Palace Apartments, (Salt Lake City MPS), 145 South 300 East, Salt Lake City, MP100006717

WASHINGTON

Jefferson County

Landes, Colonel Henry, House, 1034 Franklin St., Port Townsend, SG100006702

Klickitat County

Stonehenge Memorial, Stonehenge Dr., Goldendale vicinity, SG100006703

WISCONSIN

Douglas County

Wisconsin Point, Address Restricted, Superior vicinity, SG100006701

Additional documentation has been received for the following resource:

ARKANSAS

Pulaski County

Hillcrest Historic District (Additional Documentation), Bounded by Woodrow, Jackson and Markham Sts. and North Lookout Rd., Little Rock, AD90001920

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 2, 2021.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2021–12307 Filed 6–10–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0041]

Request for Interest in Commercial Leasing for Wind Power Development on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Request for interest; commercial leasing for wind power development on the Gulf of Mexico OCS.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) issues this request for interest (RFI) to assess interest in, and to invite public comment on, possible commercial wind energy leasing on the Gulf of Mexico OCS. BOEM will consider information received in response to this RFI to determine whether to schedule a competitive lease sale or to issue a noncompetitive lease for any portion of the area described in this RFI (RFI Area). Even if you are not interested in identifying specific acreage for leasing consideration, BOEM is interested in understanding potential opportunities for all types of renewable energy development throughout the Gulf of Mexico. Those interested in leasing within the RFI Area for a commercial wind energy project should provide detailed and specific information described in the section of this RFI entitled “Required Indication of Interest Information.” Those interested in providing public comments and information regarding site conditions, resources, and multiple uses in close proximity to, or within, the RFI Area should provide information requested in the section of this RFI entitled “Requested Information from Interested or Affected Parties.” As a result of this RFI, BOEM may or may not issue a lease for a commercial wind energy project within the RFI Area; a lease is the first step in BOEM’s process to review and approve a commercial wind energy project. See the section of this RFI entitled “BOEM’s Planning and Leasing Process.”

DATES: Submissions indicating your interest in or providing comments on

commercial leasing within the RFI Area must be received no later than July 26, 2021. Late submissions may not be considered.

ADDRESSES: Please submit indications of interest in commercial leasing via U.S. Postal Service, FEDEX, UPS, or any other mail carrier to: Bureau of Ocean Energy Management, Office of Emerging Programs, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. In addition to a paper copy, include an electronic copy on any digital data storage device. Do not submit indications of interest via the Federal eRulemaking Portal.

Please submit comments and other information as listed in the section titled "Requested Information from Interested or Affected Parties" by either of the following two methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the search box at the top of the web page, enter BOEM-2021-0041 and then click "search." Follow the instructions to submit public comments and view supporting and related materials.

2. *U.S. Postal Service or other mail delivery service.* Send your comments and other information to the following address: Bureau of Ocean Energy Management, Office of Emerging Programs, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

For information about submitting public comments, please see the section under **SUPPLEMENTARY INFORMATION** entitled "Protection of Privileged, Personal, or Confidential Information."

FOR FURTHER INFORMATION CONTACT: Tershara Matthews, Chief, Emerging Programs, Office of Emerging Programs, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, (504) 736-2676 or tershara.matthews@boem.gov.

SUPPLEMENTARY INFORMATION:

1. Authority

This RFI is published under section 8(p)(3) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1337(p)(3) as well as the implementing regulations at 30 CFR 585.210.

2. Purpose

Section 8(p)(3) of OCSLA requires BOEM to award leases competitively, unless BOEM determines that there is no competitive interest. This RFI is a preliminary step to assist BOEM in determining potential interest in offshore wind in the RFI Area. If, following this RFI, BOEM determines that there is no competitive interest in the RFI Area, BOEM may proceed with

the noncompetitive leasing process under 30 CFR 585.232. If, following this RFI, BOEM determines that there is competitive interest in any portion of the RFI Area, BOEM may proceed with the competitive leasing process under 30 CFR 585.211 through 585.225.

Whether the leasing process is competitive or noncompetitive, BOEM will include opportunities for the public to provide input. In addition, BOEM will conduct a thorough environmental review and requisite consultations with appropriate Federal agencies, federally recognized Tribes, State and local governments, and other interested parties, which will be conducted in conformance with all applicable laws and regulations. Parties other than those interested in obtaining a commercial lease are welcome to submit comments in response to this RFI.

3. Description of the RFI Area

The RFI Area comprises the entire Central Planning Area (CPA) and Western Planning Area (WPA) of the Gulf of Mexico, excluding the portions of those areas located in water depths greater than 1,300 meters.

The CPA is bounded on the north by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The eastern boundary of the CPA begins at the offshore boundary between Alabama and Florida and proceeds southeasterly to 26.19° N latitude, thence southwesterly to 25.6° N latitude. The western boundary of the CPA begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to 28.43° N latitude, thence south-southwesterly to 27.49° N latitude, thence south-southeasterly to 25.80° N latitude. The CPA is bounded on the south by the maritime boundary with Mexico as established by the Treaty between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 Nautical Miles (U.S.-Mexico Treaty), which took effect in January 2001, and by the limit of the U.S. Exclusive Economic Zone in the area east of the continental shelf boundary with Mexico. The CPA available for possible wind energy leasing consists of approximately 29 million acres.

The WPA is bounded on the west and north by the Federal-State boundary offshore Texas. The eastern boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to 28.43° N latitude, thence south-southwesterly to 27.49° N latitude, thence south-southeasterly to

25.80° N latitude. The WPA is bounded on the south by the maritime boundary with Mexico as established by the U.S.-Mexico Treaty. The WPA available for possible wind energy leasing consists of approximately 21.5 million acres.

A map depicting the RFI Area is available for download on the BOEM website at <http://www.boem.gov>. A map depicting current active oil and gas leases in the Gulf of Mexico can be found at <https://www.boem.gov/gom-interactive-lease-statistics-dashboard>.

4. Requested Information From Interested or Affected Parties

BOEM requests specific and detailed comments from the public and other interested or affected parties regarding the following features, activities, mitigations, or concerns within or around the RFI Area:

a. Geological, geophysical, and biological bathymetric conditions (including shallow hazards and live bottom).

b. Known archaeological or cultural resource sites on the seabed.

c. Information regarding the identification of historic properties or potential effects to historic properties from leasing, site assessment activities (including the construction of meteorological towers or the installation of meteorological buoys), or commercial wind energy development in the RFI Area. This includes potential offshore and onshore archaeological sites or historic properties within the RFI Area that could potentially be affected by renewable energy activities within the RFI Area. This information will inform BOEM's review of future undertakings under section 106 of the National Historic Preservation Act (NHPA) and under the National Environmental Policy Act (NEPA).

d. Information about potentially conflicting uses of the RFI Area, including, but not limited to, navigation (in particular, commercial and recreational vessel use), significant sediment resource areas, and oil and gas leasing. Additional information regarding recreational and commercial fisheries including, but not limited to, the use of the areas, the fishing gear used, seasonal use, and recommendations for reducing use conflicts.

e. Available and pertinent data and information concerning renewable energy resources and environmental conditions. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 10.8.1 in a geographic coordinate system (NAD 27).

f. Information relating to visual resources and aesthetics, the potential impacts of wind turbines and associated infrastructure to those resources, and potential strategies to help mitigate or minimize any visual effects.

g. Other relevant socioeconomic, cultural, biological, and environmental information.

h. Any other relevant information BOEM should consider during its planning and decision-making process for the purpose of issuing leases in the RFI Area.

i. Even if you are not interested in nominating acreage for leasing, BOEM is interested in understanding potential opportunities for all types of renewable energy development in the Gulf of Mexico. Please provide information to develop an understanding of the potential investment opportunities or interest in developing clean energy in the area.

5. Required Indication of Interest Information

If you intend to submit one or more indications of interest for a commercial wind energy lease within the RFI Area, you must provide the following information for each indication of interest:

a. The BOEM leasing map name and number, or official protraction diagram number, and the specific whole or partial OCS blocks within the RFI Area that you are interested in leasing. This information should be submitted as a spatial file compatible with ArcGIS 10.8.1 in a geographic coordinate system (NAD 27) in addition to your hard copy submittal. If your nomination includes one or more partial blocks, please describe those partial blocks in terms of a sixteenth (*i.e.*, sub-block) of an OCS block.

b. A description of your objectives and the facilities that you would use to achieve those objectives.

c. A preliminary schedule of proposed activities, including those leading to commercial operations.

d. Available and pertinent data and information concerning renewable energy resources and environmental conditions in the areas that you wish to lease, including energy and resource data and information used to evaluate the area. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 10.8.1 in a geographic coordinate system (NAD 27).

e. Documentation demonstrating that you are legally qualified to hold a lease in accordance with 30 CFR 585.106 and 585.107(c). Examples of the documentation appropriate for

demonstrating your legal qualifications and related guidance can be found in the Qualifications to Acquire and Hold Renewable Energy Leases and Grants on the OCS. Legal qualification documents that you provide to BOEM may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential and submit it under separate cover (see the section of this RFI entitled "Protection of Privileged or Confidential Information Section").

f. Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the commercial wind energy facility described in your submission in accordance with 30 CFR 585.107(a). Guidance regarding the documentation to demonstrate your technical and financial qualifications can be found at <http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx>.

Any documentation you submit to demonstrate your legal, technical, and financial qualifications must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file on a media storage device to be an acceptable format for an electronic copy.

6. Protection of Privileged, Personal, or Confidential Information

a. Freedom of Information Act

BOEM will protect privileged or confidential information that you submit when required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.113(b) that it qualifies for exemption from disclosure under FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such privileged or confidential information. Additionally, BOEM will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you

are nominating. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

b. Personally Identifiable Information

BOEM does not consider anonymous comments; please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any personally identifiable information (PII) included in your comment, may be made publicly available. All submissions from identified individuals, businesses, and organizations will be available for public viewing on [regulations.gov](https://www.regulations.gov) and may release comments under a FOIA request. For BOEM to withhold your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

c. Section 304 of the NHPA (54 U.S.C. 307103(a))

After consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of NHPA as confidential.

7. BOEM's Environmental Review Process

Before deciding whether and where leases may be issued, BOEM will prepare an environmental assessment (EA) under the NEPA process and conduct consultations to consider the environmental consequences associated with issuing commercial wind energy leases within the RFI Area. The EA will consider the reasonably foreseeable environmental consequences associated with leasing, such as site characterization activities (including geophysical, geotechnical, archaeological, and biological surveys) and site assessment activities (including installation of a meteorological tower or meteorological buoy). BOEM also will conduct appropriate consultations concurrently with, and integrated into, the NEPA process. These consultations include, but are not limited to, those required by the Coastal Zone Management Act, the Endangered Species Act, the Magnuson-Stevens

Fishery Conservation and Management Act, section 106 of the NHPA, and Executive Order 13175—"Consultation and Coordination with Tribal Governments."

Before BOEM allows a lessee to begin construction of a wind energy project in the RFI Area, BOEM will consider the environmental effects of the construction and operation of any wind energy facility under a separate, project-specific NEPA process. This separate NEPA process will include additional opportunities for public involvement and likely will result in the publication of an environmental impact statement.

BOEM's Planning and Leasing Process

1. *Determination of Competitive Interest:* Section 8(p)(3) of OCSLA states that "the Secretary shall issue a lease, easement, or right-of-way . . . on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest." Accordingly, BOEM must first determine whether there is competitive interest in acquiring a lease within the RFI Area to develop offshore wind energy. At the conclusion of the comment period for this RFI, BOEM will review the indications of interest received and determine if competitive interest exists in any part of the RFI Area. For areas with competitive interest, BOEM may consider proceeding with competitive leasing as described in the section of this RFI entitled "Competitive Leasing Process." For areas where BOEM determines that only one entity is interested, BOEM may consider proceeding with noncompetitive leasing, as described in the section entitled "Noncompetitive Leasing Process."

If BOEM determines that competitive interest exists in the RFI Area and identifies those areas as appropriate to lease, BOEM may hold a competitive lease sale on any or all portions of the RFI Area. In the event BOEM holds such a lease sale, all qualified bidders, including those bidders that did not submit an indication of interest in response to this RFI, will be able to participate in the lease sale. BOEM reserves the right not to lease any or all portions of the RFI Area or to modify such areas from their original, proposed form before offering them for lease.

2. *Competitive Leasing Process:* BOEM will follow the steps required by 30 CFR 585.211 through 585.225 if it decides to proceed with the competitive leasing process in the RFI Area. Those steps are:

a. *Call for Information and Nominations (Call):* BOEM will publish a Call in the **Federal Register** for leasing

in specified areas. The comment period following the Call will be 45 days. In the Call, BOEM may request comments seeking information on areas that should receive special consideration and analysis; geological conditions (including bottom hazards); archaeological sites on the seabed or nearshore; possible multiple uses of the proposed leasing area (including navigation, recreation, and fisheries); and on other socioeconomic, biological, and environmental matters. In response to the Call, potential lessees must submit the following information: The area of interest for a possible lease; a general description of the potential lessee's objectives and the facilities that the potential lessee would use to achieve those objectives; a general schedule of proposed activities, including those leading to commercial operations; data and information concerning renewable energy and environmental conditions in the area of interest, including the energy and resource data and information used to evaluate the area of interest; and documentation showing the potential lessee is qualified to hold a lease. However, a potential lessee is not required to resubmit information it has already submitted in response to this RFI.

b. *Area Identification:* Based on the information received in response to this RFI and the Call, BOEM will determine the level of commercial interest and identify the areas that would be appropriate to analyze for potential leasing. The areas identified will constitute the wind energy areas (WEA) and will be subject to environmental analysis as described above, in consultation with appropriate Federal agencies, Federally recognized Tribes, State and local governments, and other interested parties.

c. *Proposed Sale Notice (PSN):* If BOEM decides to proceed with a competitive lease sale within the WEA after completion of its environmental analysis and consultations, BOEM will publish a PSN in the **Federal Register** with a comment period of 60 days. The PSN will describe the areas BOEM intends to offer for leasing, the proposed conditions of a lease sale, the proposed auction format of the lease sale, and the lease instrument, including lease addenda. Additionally, the PSN will describe the criteria and process for evaluating bids in the lease sale.

d. *Final Sale Notice (FSN):* After considering the comments on the PSN, if BOEM decides to proceed with a competitive lease sale, it will publish a FSN in the **Federal Register** at least 30 days before the date of the lease sale.

e. *Bid Submission and Evaluation:* Following publication of the FSN in the **Federal Register**, BOEM will offer the lease areas through a competitive sale process, using procedures specified in the FSN. BOEM will review the sale, including bids and bid deposits, for technical and legal adequacy. BOEM will ensure that bidders have complied with all applicable regulations. BOEM reserves the right to reject any or all bids and to withdraw an offer to lease an area, even after bids have been submitted.

f. *Issuance of a Lease:* Following identification of the winning bid on a lease area, BOEM will notify the successful bidder and provide a set of official lease documents for signature. BOEM requires a successful bidder to sign and return the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10-business days of receiving the lease documents. Upon receipt of the required payments, financial assurance, and properly signed lease forms, BOEM may execute a lease with the successful bidder.

3. *Noncompetitive Leasing Process:* BOEM's noncompetitive leasing process would include the following steps:

a. *Determination of No Competitive Interest:* If, after evaluating all relevant information, BOEM determines there is no competitive interest in all or a portion of the RFI Area, it may proceed with the noncompetitive lease issuance process under 30 CFR 585.231 and 585.232. BOEM will seek to determine if the sole respondent, who nominated a particular area, intends to proceed with acquiring the lease; if so, the respondent must submit an acquisition fee as specified in 30 CFR 585.502(a). After receiving the acquisition fee, BOEM will follow the process outlined in 30 CFR 585.231(d) through (i), which includes the publication of a determination of no competitive interest in the **Federal Register**.

b. *Review of Lease Request:* BOEM will comply with all required consultations and environmental analyses before issuing a lease noncompetitively. Further, BOEM will coordinate and consult, as appropriate, with relevant Federal agencies, federally recognized Tribes, affected State and local governments, and other affected or interested parties in formulating lease terms, conditions, and stipulations.

c. *Lease Issuance:* After completing its review of the lease request, BOEM may offer a noncompetitive lease. Within 10-business days of receiving the lease, the respondent must execute it and provide a \$100,000 lease-specific bond, under 30 CFR 585.515, to guarantee compliance

with all terms and conditions of the lease. Within 45 days of receiving the lease, the lessee must pay BOEM the first 12 months' rent.

Amanda Lefton,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2021-12267 Filed 6-10-21; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1257]

Certain Organic Light-Emitting Diode Displays, Components Thereof, and Products Containing Same; Commission Determination Not To Review Two Initial Determinations Terminating the Investigation With Respect to Certain Respondents; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined not to review: An initial determination ("ID") (Order No. 11) issued by the presiding administrative law judge ("ALJ") partially terminating the investigation with respect to certain respondents; and an ID (Order No. 12) terminating the investigation with respect to the sole remaining respondent and thereby in its entirety. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 26, 2021, based on a complaint filed by Samsung Display Co. of Gyeonggi-do, Republic of Korea, and Intellectual Keystone Technology LLC

of Wilmington, Delaware (collectively, "Complainants"). 86 FR 16237 (March 26, 2021). The complaint, as corrected and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("Section 337"), based on the importation into the United States, sale for importation, or sale within the United States after importation of certain organic light-emitting diode displays, components thereof, and products containing same, by reason of infringement of one or more of the asserted claims of U.S. Patent Nos. 6,845,016; 7,342,177; and 7,230,593. *Id.* The complaint also alleges that a domestic industry exists. *Id.*

The Commission's notice of investigation names the following respondents: ASUSTeK Computer, Inc. of Taipei, Taiwan and ASUS Computer International of Fremont, California (collectively, "ASUS"); and JOLED Inc. of Tokyo, Japan ("JOLED"). *Id.* The Office of Unfair Import Investigations was not named as a party to this investigation. *Id.*

On May 3, 2021, Complainants filed an unopposed motion to withdraw the complaint with respect to ASUS. On the same date, Complainants and JOLED filed a joint motion to terminate the investigation with respect to JOLED, the sole remaining respondent, due to a settlement agreement and thereby terminate the investigation in its entirety. Both motions were unopposed.

On May 19, 2021, the presiding ALJ issued the two subject IDs. In Order No. 11, the ALJ granted, pursuant to Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)), Complainants' unopposed motion to partially terminate the investigation with respect to ASUS based on withdrawal of the allegations in the complaint. Order No. 11 (May 19, 2021). The ID finds that there are no agreements, written or oral, express or implied, between Complainants and ASUS. In Order No. 12, the ALJ granted, pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)), the joint motion to terminate the investigation with respect to JOLED based on settlement and thereby terminate the investigation in its entirety. The ID finds that there are no other agreements, written or oral, express or implied, between Complainants and JOLED concerning the subject matter of the investigation. In both IDs, the ALJ found there are no extraordinary circumstances that would prevent termination of the investigation and that terminating the investigation will conserve public and private resources and thus benefit the public interest.

No party filed a petition to review either Orders No. 11 or 12.

The Commission has determined not to review the subject IDs. Accordingly, the investigation is terminated with respect to ASUS and JOLED, as well as in its entirety.

The Commission vote for this determination took place on June 8, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-12319 Filed 6-10-21; 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 Casual Footwear and Packaging Thereof, DN 3551*; 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 Crocs, Inc. on June 8, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain casual footwear and packaging thereof. The complainant names as respondents: Cape Robbin Inc. of Pomona, CA; Bijora, Inc., d/b/a Akira of Chicago, IL; Carol Wright Enterprise LLC of Bloomfield, NJ; Dr. Leonard's Healthcare Corp. of Edison, NJ; Crocsky of Austin, TX; Fullbeauty Brands Inc. d/b/a Kingsize of New York, NY; Hawkins Footwear, Sports, Military & Dixie Store of Brunswick, GA; Hobibear Shoes and Clothing Ltd. of Brighton, CO; Hobby Lobby Stores, Inc. of Oklahoma City, OK; Ink Tee of Los Angeles, CA; La Modish Boutique of West Covina, CA; Legend Footwear, Inc., d/b/a Wild Diva of City of Industry, CA; Loeffler Randall Inc. of New York, NY; Maxhouse Rise Ltd. of Hong Kong; New Genesis Online LLC of Newcastle, WA; PW Shoes, Inc. a/k/a P&W of Maspeth, NY; SG Footwear Meser Grp. Inc. a/k/a S. Goldberg & Co. of Hackensack, NJ; Shoe-Nami, Inc. of Gretna, LA; Sketchers USA, Inc. of Manhattan Beach, CA; Star Bay Group Inc. of Hackensack, NJ; Yoki Fashion International LLC of New York, NY; Quanzhou ZhengDe Network Corp., d/b/a Amoji of China; 718Closeouts of Brooklyn, NY; Royal Deluxe Accessories, LLC of New Providence, NJ; and Fujian Huayuan Well Import and Export Trade Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3551") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). 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: June 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-12310 Filed 6-10-21; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-848]

Importer of Controlled Substances Application: Adiramedica, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

SUMMARY: Adiramedica, LLC. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 12, 2021. Such persons may also file a written request for a hearing on the application on or before July 12, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 17, 2021, Adiramedica, LLC., 585 Turner Industrial Way, Aston, Pennsylvania 19014, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tapentadol	9780	II

The company plans to import Tapentadol (9780) in dosage form for clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,
Assistant Administrator.

[FR Doc. 2021-12290 Filed 6-10-21; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2021-026]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: We are proposing to request an extension from the Office of Management and Budget (OMB) of a currently approved information collection, "Use of NARA Official Seals and Logos." Members of the public and other Federal agencies provide information under this collection as part of their requests to use our official seal(s) and logo(s). We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before August 10, 2021.

ADDRESSES: Send comments by email to tamee.fechhelm@nara.gov. Because our buildings are temporarily closed during the COVID-19 restrictions, we are not able to receive comments by mail during this time.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at tamee.fechhelm@nara.gov or by telephone at 301.837.1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), we invite the public and other Federal agencies to comment on proposed information collections. If you have comments or suggestions, they should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses.

We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collection:

Title: Use of NARA Official Seals and Logos.

OMB number: 3095-0052.

Agency form number: N/A.

Type of review: Regular.

Affected public: Business or other for-profit, not-for-profit institutions, Federal Government.

Estimated number of respondents: 37.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 9 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1200.8. NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the National Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. We also have an official NARA logo, and other official program and office logos (such as the Federal Register logo, Presidential library logos, Controlled Unclassified Information logo, National Historical Publications and Records Center logo, and more). Occasionally, when criteria are met, we will permit the public or other Federal agencies to use our official seals and logos. The requestor must submit a written request, that includes certain information outlined in 36 CFR 1200, to use the official seals and logos. We approve or deny the request using specific criteria, also outlined in the regulation.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2021-12268 Filed 6-10-21; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 203rd Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held open to the public by videoconference or teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is Eastern time and the ending time is approximate.

ADDRESSES: The National Endowment for the Arts, Constitution Center, 400 Seventh Street SW, Washington, DC 20560. This meeting will be held by videoconference or teleconference. Please see arts.gov for the most up-to-date information.

FOR FURTHER INFORMATION CONTACT: Victoria Hutter, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682-5570.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the September 10, 2019 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, at 202/682-5532 or accessibility@arts.gov, at least seven (7) days prior to the meeting.

The upcoming meeting is:

National Council on the Arts 203rd Meeting

This meeting will be held by videoconference or teleconference.

Date and time: June 24, 2021; 4:00 p.m. to 5:00 p.m.

There will be opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the NEA Acting Chairman.

Register in advance for this webinar: https://www.zoomgov.com/webinar/register/WN_xsRq1HXUQZGiVVFaoiFVTA.

Dated: June 7, 2021.

Sherry Hale,
Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021-12239 Filed 6-10-21; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 9 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; haless@arts.gov, or call (202) 682-5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:
Presenting and Multidisciplinary Works (review of applications):

This meeting will be closed.
Date and time: July 1, 2021; 2:00 p.m. to 4:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: July 1, 2021; 2:00 p.m. to 4:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: July 12, 2021; 11:00 a.m. to 1:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: July 13, 2021; 11:00 a.m. to 1:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: July 14, 2021; 11:30 a.m. to 1:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: July 14, 2021; 2:30 p.m. to 4:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: July 15, 2021; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: July 23, 2021; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: July 23, 2021; 2:30 p.m. to 4:30 p.m.

Dated: June 8, 2021.

Sherry P. Hale,
Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021-12283 Filed 6-10-21; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2019-0086]

Guidance for Implementation of Changes, Tests, and Experiments

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 3 to Regulatory Guide (RG), 1.187. This Revision (*i.e.*, Revision 3) addresses a clarification to the RG in response to post-promulgation comments on RG 1.187, Revision 2. This RG provides licensees with a method that the NRC considers acceptable for use in complying with the Commission's regulations on the process by which licensees, under certain conditions, may make changes to their facilities and procedures as described in the final safety analysis report (FSAR) (as updated) (also referred to as the updated final safety analysis report), and conduct tests or experiments not described in the FSAR (as updated), without obtaining a license amendment pursuant to NRC requirements.

DATES: Revision 3 to RG 1.187 is available on June 11, 2021.

ADDRESSES: Please refer to Docket ID NRC-2019-0086 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–2019–0086. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *Attention*: The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

Revision 3 to RG 1.187 and the regulatory analysis may be found in ADAMS under Accession Nos. ML21109A002 and ML19045A432, respectively.

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FOR FURTHER INFORMATION CONTACT: Philip McKenna, Office of Nuclear Reactor Regulation, telephone: 301–415–0037, email: Philip.McKenna@nrc.gov and Robert Roche-Rivera, Office of Nuclear Regulatory Research, telephone: 301–415–8113, email: Robert.Roche-Rivera@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations,

techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

RG 1.187, Revision 3, "Guidance for Implementation of 10 CFR 50.59, 'Changes, Tests, and Experiments,'" addresses a clarification to the RG in response to post-promulgation comments on RG 1.187, Revision 2 (ADAMS Accession No. ML20125A730). Specifically, this Revision (*i.e.*, Revision 3) adds an additional clarification in section C.2.e of the RG related to the Human Factors Engineering screening examples in NEI 96–07, Appendix D, Revision 1, "Supplemental Guidance for Application of 10 CFR 50.59 to Digital Modifications," (ADAMS Accession No. ML20135H168), that discuss an increase in response time.

II. Additional Information

Proposed Revision 2 of RG 1.187 was issued with a temporary identification of Draft Regulatory Guide (DG)–1356 (ADAMS Accession No. ML19045A435).

The NRC published a notice of the availability of DG–1356 in the **Federal Register** on May 30, 2019 (84 FR 25077) for a 45-day public comment period. The public comment period closed on July 15, 2019. Public comments on DG–1356 and the staff responses to the public comments are available in ADAMS under Accession No. ML20125A729. Based on the public comments, subsequent public meetings, and revisions to NEI 96–07, Appendix D, the NRC revised the proposed Revision 2 of RG 1.187 and issued the final Revision 2 on July 7, 2020 (85 FR 40696), with a 30-day post-promulgation public comment period. Revision 2 of RG 1.187 endorsed NEI 96–07, Appendix D, Revision 1, as a means for complying with the requirements of section 50.59 of title 10 of the *Code of Federal Regulations* (10 CFR), "Changes, tests and experiments" when conducting digital instrumentation and control (I&C) modifications, with certain clarifications. The post-promulgation public comment period closed on August 6, 2020. Post-promulgation public comments on RG 1.187, Revision 2 and the staff responses to the post-promulgation public comments are available under ADAMS under Accession No. ML21109A001.

The NRC notes that a non-concurrence on RG 1.187, Revision 2, was submitted and entered the Non-Concurrence Process (NCP) under tracking number of NCP–2020–005. The NCP form and attachments are available

in ADAMS under Accession No. ML20197A381.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Revision 3 of RG 1.187 provides guidance on complying with the requirements of 10 CFR 50.59 when performing a digital I&C modification. As explained in RG 1.187, Revision 3, licensees are not required to comply with the positions set forth in this regulatory guide. Therefore, RG 1.187, Revision 3, does not constitute backfitting as defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests"; constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52, "Licenses, Certificates, and Approvals for Nuclear Power Plants." If, in the future, the NRC were to impose a position in this RG 1.187, Revision 3, in a manner that would constitute backfitting or forward fitting or affect the issue finality for a part 52 approval, then the NRC would address the backfitting provision in 10 CFR 50.109, the forward fitting provision of MD 8.4, or the applicable issue finality provision in part 52, respectively.

Dated: June 7, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021–12280 Filed 6–10–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 14, 21, 28, July 5, 12, 19, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of June 14, 2021

There are no meetings scheduled for the week of June 14, 2021.

Week of June 21, 2021—Tentative

Tuesday, June 22, 2021

9:00 a.m. Briefing on Transformation at the NRC—Midyear Review (Public Meeting); (Contact: Maria Arribas-Colon: 301-415-6026)

Additional Information: Due to COVID-19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—<https://video.nrc.gov/>.

Week of June 28, 2021—Tentative

There are no meetings scheduled for the week of June 28, 2021.

Week of July 5, 2021—Tentative

There are no meetings scheduled for the week of July 5, 2021.

Week of July 12, 2021—Tentative

There are no meetings scheduled for the week of July 12, 2021.

Week of July 19, 2021—Tentative

There are no meetings scheduled for the week of July 19, 2021.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at Wesley.Held@nrc.gov. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at 240-428-3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at Wendy.Moore@nrc.gov or Tyesha.Bush@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 9, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2021-12449 Filed 6-9-21; 4:15 pm]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92120; File No. SR-ICEEU-2021-013]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Articles of Association

June 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 25, 2021, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") proposes to modify its Articles of Association (the "Articles"). The revisions would not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

The purpose of the amendments is to update the Articles to reflect certain changes in the composition of the ICE Clear Europe Board and the composition and structure of Board committees, to clarify certain director independence standards, to clarify certain super-quorum standards applicable to certain actions relating to CDS clearing, to revise certain provisions regarding directors and to reflect the use of gender-neutral language, as discussed in more detail herein.

In article 3,³ definitions of certain specific committees would be deleted, including the Audit Committee, Board Risk Committee, Compensation Committee and Nomination Committee, and the definition of Committee would be revised to generally reference any committee constituted by the Board under the Articles. Although ICE Clear Europe is not proposing to change its current committee structure at this time, it does not believe the committees need to be defined in the Articles. Since the Board is authorized to create, modify or dissolve committees as it determines to be appropriate, the amendments would facilitate future changes to the committee structure by the Board without need to amend the Articles. The definition of Product Risk Committee, however, would not be removed from the Articles because there are references to this committee throughout the Articles in light of certain specific requirements relating to the CDS Director.

In addition, the amendments would modify certain other definitions, including CDS Director, Committees, Independent Director, Risk Committee and Super-Quorum Matters. These definitions would be updated as follows:

- CDS Director—a sentence would be added to the definition to clarify that the CDS Director may also meet the criteria required of an Independent Director, however, for the avoidance of doubt they will continue to be classified only as a CDS Director.

- Independent Director—this definition would be updated such that instead of describing this person as independent of the Company and of the Clearing House (without further definition of independence), the definition would require the director to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References herein to the numbering of particular articles will be to the articles as amended.

meet the independence criteria for a director, as defined under relevant applicable legislation.⁴

- **Risk Committee**—this definition would be renamed Product Risk Committee, and references to this committee would be updated throughout the Articles. This change reflects the correct current name and function of this committee (and distinguishes the Product Risk Committee from other existing risk committees). Further, the statement that it is composed of directors would be deleted as it does not reflect the composition of the committee under its terms of reference (which includes clearing member representatives, among others).

- **Super-Quorum Matters**—this definition would be updated to clarify, as a matter of drafting, that such matters include the criteria for CDS Clearing Membership. A reference to the terms of reference for the CDS Risk Committee would be updated to the terms of reference for the Product Risk Committee with responsibility for CDS (which is the current name for the relevant committee). The amendments would also resolve a drafting ambiguity by removing the subject and content of the Board Resolution as a Super-Quorum Matter as, by current practice, not all Board resolutions are Super-Quorum Matters.

A new article 11 would provide that a member shall be deemed present at a general meeting if participating by telephone or other electronic means and all participating members can hear each other.

The amendments would make certain revisions to the composition of the board and board committees. Amended article 26 would provide that one third of directors appointed to the board should be classed as Independent Directors (instead of at least two and not more than four), and at least one CDS Director would be required to be appointed to serve in such a capacity at any one time (instead of two). The proposed change to the required number of CDS Directors follows the retirement of one of the previous CDS Directors and the determination by the Clearing House that it is not necessary to appoint a minimum of two CDS Directors to serve in such capacity in order to

adequately address the interests of Clearing Members in Clearing House governance. In addition to the remaining CDS Director, Clearing Members would continue to be represented through the CDS Product Risk Committee which, other than the Chair, is composed entirely of representatives of Clearing Members. The change was approved by the CDS Product Risk Committee, and no Clearing Members objected to the change in the required number of CDS Directors.

In article 27, consistent with the changes to the definitions of Committees described above, the reference to the Nomination Committee would be deleted and replaced with language referring to a committee appointed by the board which would be responsible for appointing directors by ordinary resolution. Article 28 would be amended to reflect the change in article 26 to require only a single CDS Director.

Article 30A would be amended to delete certain language pertaining to a CDS Director's retirement date that is no longer necessary with a single CDS Director. In article 32, the reference to the Nomination Committee would be deleted and replaced with language referring to a committee of the board appointed to consider retirement of directors under the Articles. Likewise, article 33 would be amended to delete the reference to the Nomination Committee and replaced such reference with language referring to a committee appointed by the board to considering the reappointment of an Independent Director.

Article 44, which discusses the delegation of directors' power to certain committees, would be amended to delete references to the specific committees that were deleted from article 3 (*i.e.*, the Risk Committee(s), an Audit Committee, a Board Risk Committee, a Nominations Committee and a Compensation Committee).

Amended Article 49 would clarify that directors may be paid certain expenses that are reasonable and the amendments would remove the requirement that this be subject to board approval as such expenses would be approved by the ICE Clear Europe President.

Amendments to article 59(a) would clarify the operation of the super-quorum requirement for Super-Quorum Matters, which relate to CDS Contracts including to reflect the requirement to only have one CDS Director. For such matters, if a CDS Director has been appointed, such director must be present at the meeting, together with the normal quorum of a majority of the

directors serving on the board at the time. The amendments would add a defined term for "Super-Quorum" and make revisions throughout the Articles to use such term as appropriate. The amendments also clarify that the CDS director must be present at the present for a super-quorum meeting, but need not vote in favor of the resolution. Amendments to article 59(b) would state explicitly that in order for a quorum to be met for non-super-quorum matters, the required directors must be present at the meeting. Article 59(c) would be amended to clarify that for super-quorum matters that need to be resolved in an emergency, the presence of a CDS Director is not necessary. The amendments would also clarify that whether an emergency exists for this purpose is to be determined by the President or their delegate.

Similarly, article 59A, would be revised to clarify that where Super-Quorum matters have to be adjourned to a subsequent meeting because no CDS Director is present, the subsequent meeting must have a quorum present at the meeting but need not include a CDS Director.

Throughout the Articles, various provisions would be amended to use gender-neutral language. Certain non-substantive typographical and similar corrections would also be made.

Various articles would be renumbered due to the changes discussed above.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Articles are consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes are designed to clarify and update certain aspects of ICE Clear Europe's Articles, particularly around board committees, the number of CDS Directors, and the application of certain super-quorum requirements applicable to matters relating to CDS Contracts. The amendments are intended to facilitate use of board committees where

⁴ Specifically, such legislation would include the definition of "independent member" pursuant to Article 2(28) of the European Market Infrastructure Regulation (EMIR), Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as incorporated into UK law under the European Union (Withdrawal) Act 2018 (UK EMIR).

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

appropriate, without need to update the Articles. The amendments reduce the required number of CDS Directors to one, and clarify the operation of the CDS super-quorum requirements in light of that change. In ICE Clear Europe's view, these amendments would enhance and streamline the clearing house's overall governance framework, and thus facilitate the efficient operation of the clearing house and the prompt and accurate clearance and settlement of transactions and the public interest, within the meaning of the Act. For these reasons, the amendments would also promote governance arrangements that are clear and transparent to fulfill the public interests requirements in Section 17A of the Act⁷ applicable to clearing agencies, support the objectives of owners and participants and promote the effectiveness of the clearing agency's risk management procedures.

Further, Section 17A(b)(3)(C) of the Act⁸ requires that the rules of a clearing agency "assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs." Following the proposed amendments, Clearing Members will continue to be represented on the Board by the existing CDS Director and the Articles will continue to require the appointment of at least one CDS Director to the Board. In addition, the interests of Clearing Members will continue to be represented through the F&O and CDS Product Risk Committees and the Client Risk Committee. The majority of the members of all the three committees are Clearing Member representatives.⁹ As such, ICE Clear Europe believes its governance arrangements, as modified by the amendments to the Articles, will continue to provide a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs, within the meaning of Section 17A(b)(3)(C).¹⁰

Rule 17Ad-22(e)(2)(i)¹¹ requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent. The proposed amendments to the Articles more clearly set out the composition of the board and board committees, the appointment of directors, delegation of

directors' powers and requirements relating to a quorum and super-quorum. ICE Clear Europe believes that the amendments to the Articles are therefore consistent with the requirements of Rule 17Ad-22(e)(2).¹²

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to further strengthen Clearing House governance arrangements by more clearly setting out requirements relating to the composition of the board and board committees, the appointment of directors, delegation of directors' powers and meeting quorum and super-quorum requirements. The amendments do not affect any terms or conditions of cleared contracts, and are not intended to affect directly Clearing Members or market participants, or the markets for cleared products. As a result, ICE Clear Europe does not otherwise believe the amendments would affect the costs of or access to clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice 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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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-ICEEU-2021-013 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-ICEEU-2021-013. 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

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

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78q-1(b)(3)(C).

⁹ Under UK EMIR Article 28, ICE Clear Europe is required to ensure that the Client Risk Committee maintains Clearing Member and client representation.

¹⁰ 15 U.S.C. 78q-1(b)(3)(C).

¹¹ 17 CFR 240.17 Ad-22(e)(2)(i).

¹² 17 CFR 240.17 Ad-22(e)(2).

publicly. All submissions should refer to File Number SR-ICEEU-2021-013 and should be submitted on or before July 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12247 Filed 6-10-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92122; File No. SR-NYSEAMER-2021-30]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

June 7, 2021.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 2, 2021, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (“Fee Schedule”) regarding the charges applicable to Manual transactions by NYSE American Options Market Makers, Specialists, and e-Specialists. The Exchange proposes to implement the fee change effective June 2, 2021.⁴ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify Section I.A. of the Fee Schedule regarding the charges for Manual transactions by NYSE American Options Market Makers, Specialists, and e-Specialists. Currently, NYSE American Options Market Makers (“Market Makers”) are charged \$0.25 per contract for Manual transactions; Specialists and e-Specialists (collectively, “Specialists”) are charged \$0.18 per contract for Manual transactions. The Exchange proposes to modify the rates charged for Manual transactions to \$0.35 per contract for Market Makers and \$0.30 per contract for Specialists. The proposed rate for Market Makers is competitive and intended to align the Exchange’s fees for Manual transactions by Market Makers with those charged by other markets.⁵ The proposed rate for Specialists would reduce the existing disparity between rates charged to Specialists and Market Makers from seven cents (\$0.07) to five (\$0.05), which disparity the Exchange believes continues to be justified given the additional fees imposed on Specialists.⁶

The Exchange also proposes to modify Footnote 6 to Section 1.A. of the Fee Schedule, which provides that participants in the Prepayment Program ⁷ will pay reduced rates for

Manual transactions. Specifically, the Exchange proposes to modify Footnote 6 to clarify that Market Makers and Specialists who participate in the Prepayment Program will receive a per contract discount on Manual transactions, instead of setting forth a specific per contract charge. Currently, Footnote 6 provides that Market Makers who participate in the Prepayment Program are charged \$0.23 per contract for Manual transactions (representing a \$0.02 discount on the current \$0.25 per contract rate applicable to Market Makers), and Specialists who participate in the Prepayment Program are charged \$0.17 per contract for Manual transactions (which represents a \$0.01 discount on the current \$0.18 per contract rate applicable to Specialists). The Exchange proposes to revise this footnote to specify that Market Makers that participate in the Prepayment Program will receive a \$0.02 discount on the per contract rate for Manual transactions, and Specialists that participate in the Prepayment Program will receive a \$0.01 discount on the per contract rate for Manual transactions.⁸ The Exchange proposes this modification to the Fee Schedule to clarify the nature of the discount available to Market Makers and Specialists who participate in the Prepayment Program and to simplify the Fee Schedule in the event of any future changes to the rates applicable to Manual transactions by Market Makers and/or Specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference

⁵ See, e.g., Nasdaq PHLX LLC (“Phlx”) Pricing Schedule, available at: <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (providing \$0.35 per contract rate for manual transactions by market makers); Cboe Exchange, Inc. (“Cboe”) Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing \$0.35 per contract rate for manual transactions by market makers).

⁶ See Fee Schedule, Section III.C. (setting forth the Rights Fee assessed on each issue in a Specialist’s allocation, with rates based on the Average National Daily Customer Contracts).

⁷ See Fee Schedule, Section I.D.

⁸ Based on the proposed \$0.35 and \$0.30 per contract rates for Market Maker and Specialist Manual transactions, respectively, Market Makers who participate in the Prepayment Program would, as proposed, receive a discounted rate of \$0.33 per contract on Manual transactions, and Specialists who participate in the Prepayment Program would receive a discounted rate of \$0.29 per contract on Manual transactions.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR-NYSEAmer-2021-25), then withdrew and refiled on May 12, 2021 (SR-NYSEAmer-2021-27) and May 21, 2021 (SR-NYSEAmer-2021-28), which latter filing the Exchange withdrew on June 2, 2021.

for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹¹

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹² Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.¹³

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The proposed rule change is designed to bring the Exchange’s fees for Market Maker Manual transactions into alignment with those charged on other markets with Trading Floors. The Exchange believes it is reasonable to increase certain fees, similar to fees assessed by competing options exchanges for similar transactions, and notes that Specialists will continue to be charged lower fees than those assessed by competing options exchanges for similar transactions.¹⁴ The Exchange

also believes that it is reasonable to continue to offer Specialists lower fees than Market Makers for Manual transactions given that Specialists are subject to additional monthly Rights Fees.¹⁵ The Exchange believes that the proposed increased charge for Manual executions by Market Makers and Specialists but not for other market participants is reasonable because the resulting disparity would align the Exchange’s fees for Manual executions with the fees charged on other exchanges.¹⁶

The Exchange also believes the proposed changes, even though they are increased fees, would not discourage Market Makers and Specialists from continuing to conduct Manual transactions on the Exchange, including because Market Makers and Specialists who participate in the Prepayment Program will continue to receive discounted rates on Manual transactions and because Specialists will continue to be charged lower fees than those assessed by competing options exchanges for similar transactions. And, for Market Makers and Specialists that do not participate in the Prepayment Program, the Exchange believes that other reduced pricing and incentives offer by the Exchange would continue to encourage these participants to conduct Manual transactions on the Exchange.¹⁷

The Exchange thus believes that the proposed changes would continue to attract volume and liquidity to the Exchange generally and would therefore benefit all market participants (including those that do not participate in Manual transactions) through increased opportunities to trade.

¹⁵ See *supra* note 6.

¹⁶ The Exchange does not impose any fee on Manual transactions by Customers but does charge \$0.25 per contract for Manual transactions by Firms, Broker-Dealers and Professional Customers, which rates are consistent with fees charged these market participants on other exchanges. See, e.g., *supra* note 5, PHLX Pricing Schedule and Cboe Fee Schedule (both exchanges imposing no charge for manual transactions by customers and imposing a \$0.25 per contract rate for manual transactions by firms, broker-dealers and professional customers).

¹⁷ See Fee Schedule, Section III.A (regarding ATP fees for Floor Market Makers); see also, e.g., Notice of Filing and Immediate Effectiveness of Proposed Change to Amend the NYSE American Options Fee Schedule, Securities Exchange Act Release No. 90193 (October 15, 2020), 85 FR 67069 (October 21, 2020) (SR-NYSEAMER-2020-76) (reducing the cap on strategy executions from \$1,000 to \$200 for ATP Holders that execute at least 25,000 monthly billable contract sides in Strategy Executions) and Fee Schedule, Section I.J (Strategy Execution Fee Cap). While the reduction to the cap on Strategy Executions is available to all ATP Holders, the Exchange notes that Market Makers and Specialists have a time and place advantage by virtue of their presence on the Trading Floor to participate in such executions and therefore benefit from the reduced cap.

Finally, to the extent the proposed fees do not discourage Market Makers and Specialists from continuing to conduct Manual transactions on the Exchange, the Exchange believes the proposed changes would continue to improve the Exchange’s overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to maintain its market share relative to its competitors.

The Proposed Rule Change Is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the type of business transacted on the Exchange, and Market Makers and Specialists can opt to participate in Manual transactions or not. Market Makers and Specialists who participate in the Prepayment Program will also continue to receive the same size discount on their respective rates for Manual transactions, as modified. The Exchange notes that the increased fees for Manual executions by Market Makers and Specialists, but not for other market participants, represents an equitable allocation of fees given that the proposed fees (and resulting disparity) are consistent with fees charged for Manual executions by market makers on other exchanges.¹⁸ The Exchange also believes that continuing to offer Specialists lower fees than Market Makers is an equitable allocation of fees given that Specialists are subject to additional fees set forth in the Exchange’s Fee Schedule.¹⁹

Moreover, even though the proposed changes increase the fees applicable to Manual transactions by Market Makers and Specialists, the Exchange does not believe they will discourage such transactions on the Exchange or the aggregation of such executions at the Exchange as a primary execution venue, including because of other reduced fees and incentives available to such participants on the Exchange.²⁰ To the extent that the proposed changes continue to attract Manual transactions to the Exchange, this order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would continue to improve

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹² The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹³ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange’s market share in multiply-listed equity and ETF options increased slightly from 7.89% for the month of March 2020 to 8.63% for the month of March 2021.

¹⁴ See *supra* note 5.

¹⁸ See *supra* notes 5 and 16.

¹⁹ See *supra* note 6.

²⁰ See *supra* note 17.

market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would apply to all Market Makers and Specialists who execute Manual transactions on the Exchange on an equal and non-discriminatory basis. In addition, all Market Makers and Specialists who are participants in the Prepayment Program will continue to receive a discount on the rates applicable to their respective Manual transactions. The proposal is based on the amount and type of business transacted on the Exchange, and Market Makers and Specialists are not obligated to participate in Manual transactions on the Exchange. Rather, the proposal is designed to continue to encourage the use of the Exchange as a primary trading venue (if they have not done so previously) by maintaining the Trading Floor for Manual transactions.

The Exchange also believes that increasing fees for Manual executions by Market Makers, but not other market participants, is not unfairly discriminatory given that the proposed rates (and resulting disparity) are a competitive response to rates charged on competing options exchanges for manual executions by market makers and because these participants may available themselves of other reduced fees and incentives offered by the Exchange.²¹ The Exchange also believes that it is not unfairly discriminatory to continue to offer Specialists lower fees than Market Makers given that Specialists are subject to additional fees set forth in the Exchange's Fee Schedule.²²

To the extent that the proposed change assists the Exchange in continuing to attract Manual transactions to the Trading Floor, this order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would contribute to market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting volume and liquidity would continue to provide

more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would be consistent with charges for similar business at other markets. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²³

Intramarket Competition. The proposed change is designed to continue to promote the use of the Exchange as a primary trading venue by maintaining the Trading Floor for Manual transactions, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. The Exchange believes that the proposed increased fees for Manual executions by Market Makers and Specialists but not for other market participants would not impose any burden on intermarket competition that is not necessary or appropriate because the proposed fees (and resulting disparity) are consistent with fees charged for Manual executions by market makers on other exchanges and because these participants may available themselves of other reduced fees and incentives offered by the Exchange.²⁴ The Exchange believes that the proposed modifications to the rates applicable to Manual transactions by Market Makers and Specialists will not discourage those market participants from continuing to conduct Manual transactions on the Exchange (including because those Market Makers and

Specialists who participate in the Prepayment Program will continue to receive a discounted rate on Manual transactions and because Specialists will continue to receive lower fees than those assessed by competing options exchanges for similar transactions). To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the continued market liquidity. Enhanced market quality and increased transaction volume that results from the increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its mechanisms and fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.²⁵ Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.²⁶

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees to be more closely aligned with fees charged by other markets with Trading Floors for similar transactions.²⁷ The Exchange also believes that the proposed changes would continue to promote competition between the Exchange and other execution venues by encouraging orders to be sent to the Exchange for execution. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

²⁵ See *supra* note 12.

²⁶ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange's market share in multiply-listed equity and ETF options increased slightly from 7.89% for the month of March 2020 to 8.63% for the month of March 2021.

²⁷ See *supra* notes 5 and 16.

²¹ See *supra* notes 5, 16 and 17.

²² See *supra* note 6.

²³ See Reg NMS Adopting Release, *supra* note 11, at 37499.

²⁴ See *supra* notes 5, 16 and 17.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ²⁸ of the Act and subparagraph (f)(2) of Rule 19b-4 ²⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ³⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2021-30 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-NYSEAMER-2021-30. 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-NYSEAMER-2021-30, and should be submitted on or before July 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-12249 Filed 6-10-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92117; File No. SR-FICC-2020-017]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Calculation of the MBSD VaR Floor To Incorporate a Minimum Margin Amount

June 7, 2021.

On November 20, 2020, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2020-017 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule

19b-4 thereunder.² The Proposed Rule Change was published for comment in the **Federal Register** on December 10, 2020.³ On December 30, 2020, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁵ On February 16, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶ The Commission received comment letters on the Proposed Rule Change.⁷ In addition, the Commission received a letter from FICC responding to the public comments.⁸

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 90568 (December 4, 2020), 85 FR 79541 (December 10, 2020) (SR-FICC-2020-017) ("Notice"). FICC also filed the proposal contained in the Proposed Rule Change as advance notice SR-FICC-2020-804 ("Advance Notice") with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act"). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b-4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on January 6, 2021. Securities Exchange Act Release No. 90834 (December 31, 2020), 86 FR 584 (January 6, 2021) (File No. SR-FICC-2020-804) ("Notice of Filing"). Upon publication of the Notice of Filing, the Commission extended the review period of the Advance Notice for an additional 60 days because the Commission determined that the Advance Notice raised novel and complex issues. On March 12, 2021, the Commission issued a request for information regarding the Advance Notice. See Commission's Request for Additional Information, available at <https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804-8490035-229981.pdf>. On April 16, 2021, FICC submitted its response thereto. See Response to Commission's Request for Additional Information, available at <https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804-8685526-235624.pdf>; Letter from James Nygard, Director and Assistant General Counsel, FICC (April 16, 2021), available at <https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804-8679555-235605.pdf>. The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

⁴ 15 U.S.C. 78s(b)(2).

⁵ Securities Exchange Act Release No. 90794 (December 23, 2020), 85 FR 86591 (December 30, 2020) (SR-FICC-2020-017).

⁶ Securities Exchange Act Release No. 91092 (February 9, 2021), 86 FR 9560 (February 16, 2021) (SR-FICC-2020-017).

⁷ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2020-017/srficc2020017.htm>. Comments on the Advance Notice are available at <https://www.sec.gov/comments/sr-ficc-2020-804/srficc2020804.htm>. Because the proposals contained in the Advance Notice and the Proposed Rule Change are the same, all comments received on the proposal were considered regardless of whether the comments were submitted with respect to the Advance Notice or the Proposed Rule Change.

⁸ See Letter from Timothy J. Cuddihy, Managing Director of Depository Trust & Clearing Corporation

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(2).

³⁰ 15 U.S.C. 78s(b)(2)(B).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Section 19(b)(2) of the Act⁹ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹⁰ The 180th day after publication of the Notice in the **Federal Register** is June 8, 2021.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,¹¹ the Commission designates August 7, 2021, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2020-017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12244 Filed 6-10-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92119; File No. SR-NASDAQ-2020-082]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Offer Certain Listed Companies Access to a Complimentary Board Recruiting Solution To Help Advance Diversity on Company Boards

June 7, 2021.

On December 1, 2020, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant

Financial Risk Management, (March 5, 2021) ("FICC Letter").

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B)(ii)(II).

¹¹ *Id.*

¹² 17 CFR 200.30-3(a)(57).

to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to offer certain listed companies access to a complimentary board recruiting solution to help advance diversity on company boards. The proposed rule change was published for comment in the **Federal Register** on December 10, 2020.³ On January 19, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On February 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On March 10, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 10, 2020. June 8, 2021 is 180 days from that date, and August 7, 2021 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or

disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁹ designates August 7, 2021 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NASDAQ-2020-082), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92118; File No. SR-NASDAQ-2020-081]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Listing Rules Related to Board Diversity

June 7, 2021.

On December 1, 2020, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt listing rules related to board diversity. The proposed rule change was published for comment in the **Federal Register** on December 11, 2020.³ On January 19, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On February 26,

⁹ *Id.*

¹⁰ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90574 (December 4, 2020), 85 FR 80472. Comments received on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90951, 86 FR 7135 (January 26, 2021). The Commission

Continued

2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On March 10, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 11, 2020. June 9, 2021 is 180 days from that date, and August 8, 2021 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁹ designates August 8, 2021 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NASDAQ-2020-081), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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designated March 11, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 91286, 86 FR 14484 (March 16, 2021).

⁸ 15 U.S.C. 78s(b)(2).

⁹ *Id.*

¹⁰ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92121; File No. SR-CBOE-2021-037]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule To Adopt a New Floor Broker Incentive Program and To Make a Clarifying Change to the Definition of Facilitation Orders

June 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule to adopt a new Floor Broker incentive program and to make a clarifying change to the definition of facilitation orders. 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to adopt a new Floor Broker incentive program and to make a clarifying change to the definition of facilitation orders in footnote 11 of the Fees Schedule, effective June 1, 2021.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange offers specific rates and rebates in its Fees Schedule, like that of other options exchanges' fees schedules, which the Exchange believes provide incentive to Trading Permit Holders (“TPHs”) to increase order flow of certain qualifying orders.

Also, in response to the competitive environment, the Exchange offers various tiered incentive programs which provide TPHs opportunities to qualify for higher rebates or reduced rates where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for TPHs to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers, among other tiered volume programs, a

³ See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (May 24, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Liquidity Provider Sliding Scale that offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols, except products in Underlying Symbol List A⁴ and XSP, during the calendar month.

The Exchange now proposes to adopt a new volume-based incentive program for its Floor Brokers. Specifically, the proposed Floor Broker Sliding Scale Rebate Program (or, the “Program”) offers four tiers that provide rebates on a sliding scale⁵ for qualifying orders where a TPH meets certain liquidity thresholds. As proposed, the Program applies to all products except for Underlying Symbol List A,⁶ Sector Indexes,⁷ DJX, MRUT, MXEA, MXEF and XSP (“multiply-listed options”). The Program offers two categories of rebates that correspond to each of the proposed tiers; one that applies to Firm Facilitated orders (*i.e.*, orders that yield fee code FF)⁸ and another that applies to all other non-Firm Facilitated orders (*i.e.*, orders that do not yield fee code FF). The proposed rebates will apply only to Non-Customer,⁹ Non-Strategy, Floor Broker orders. The Exchange notes that the definition of facilitation orders is provided in footnote 11 of the Fees Schedule (as described in further detail below) and, therefore, the proposed rule

change appends footnote 11 to the “Firm Facilitated Rebate” column in the Floor Broker Incentive Program table. Further, Strategy Orders are defined in footnote 13 of the Fees Schedule and, therefore, the proposed rule change also appends footnote 13 to the “Criteria” column in the Floor Broker Incentive Program table.¹⁰ A TPH will receive the applicable rebates on its qualifying orders if it meets the corresponding tier criteria, measured over a month. The tiers’ criteria are also based on the amount of a TPH’s Non-Customer, Non-Strategy, Floor Broker volume over a baseline month (“Step-Up Volume”). The specific Floor Broker Sliding Scale Rebate Program tiers and corresponding rebates, as proposed, are as follows:

- Tier 1 provides a rebate of \$0.01 per contract for all qualifying (*i.e.*, Non-Customer, Non-Strategy, Floor Broker orders in all products except Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF and XSP) Firm Facilitated orders, and a rebate of \$0.03 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than zero contracts;

- Tier 2 provides a rebate of \$0.01 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.04 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 100,000 contracts;

- Tier 3 provides a rebate of \$0.01 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.05 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-

Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 250,000 contracts; and

- Tier 4 provides a rebate of \$0.015 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.06 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 500,000 contracts.

The proposed rule change also makes clear in the proposed Program table that the Exchange will aggregate a TPH’s volume with the volume of its affiliates (“affiliate” defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, Schedule A) for the purposes of calculating Step-Up Volume each month.¹¹ The proposed Program is designed to encourage Floor Brokers to increase their order flow in all multiply-listed equity and ETP options to the Exchange’s trading floor to meet the proposed tier criteria in order to receive the proposed corresponding rebate for their qualifying orders. The Exchange believes that incentivizing increased liquidity to its trading floor allows the Exchange to maintain a robust hybrid trading environment that serves to support price discovery and increased execution opportunities in open outcry, to the benefit of all market participants.

The proposed rule change also makes a clarifying amendment to footnote 11 of the Fees Schedule, which provides, in relevant part, for the definition of facilitation orders for the purposes of the Fees Schedule. Specifically, footnote 11 currently provides that “facilitation orders” for this purpose are¹² defined as any order in which a Clearing Trading Permit Holder (“F” capacity code)¹³ or Non-Trading Permit Holder Affiliate (“L” capacity code) is contra to any other origin code, provided the same

⁴ See Cboe Options Fees Schedule, Footnote 34, which provides that Underlying Symbol List A includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX.

⁵ The rebate offered under each tier is only applied to the qualifying volume within that tier. In addition, the Exchange calculates the average rebate for each type of rebate (Firm Facilitated and Non-Firm Facilitated) based on the TPH’s total qualifying volume across all four tiers plus its qualifying baseline volume (which corresponds to a rebate of \$0.00). Each respective average rebate is applied to the percentage of qualifying volume that corresponds specifically to the type of order (Firm Facilitated or Non-Firm Facilitated) volume and added together, which results in a final average rebate. The final average rebate is then applied to the TPH’s total qualifying executions. This is consistent with the manner in which the Exchange calculates rebates for other sliding scale programs offered under the Fees Schedule.

⁶ See *id.*

⁷ See Cboe Options Fees Schedule, Footnote 47, which provides that Sector Index underlying symbols include IXB, SIXC, IXE, IXI, IXM, IXR, IXRE, IXT, IXU, IXV AND IXZ, and corresponding option symbols include SIXB, SIXC, SIXE, SIXI, SIXM, SIXR, SIXRE, SIXT, SIXU, SIXV AND SIXY.

⁸ Orders that yield fee code FF are not assessed a charge. See Cboe U.S. Options Fee Schedules, Fees and Associated Fee Codes, available at: https://markets.cboe.com/us/options/membership/fee_schedule/cboe/.

⁹ Non-Customers include all capacities except for “C” (Customer), specifically: “M” capacity (Market-Maker); “N” capacity (Non-TPH Market-Maker); “F” capacity (Clearing TPH); “L” capacity (Non-Clearing TPH Affiliates); “J” capacity (Joint Back-Office); “U” capacity (Professional); and “B” capacity (Broker-Dealer).

¹⁰ Footnote 13, in relevant part, provides that: a “merger strategy” is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock; a “short stock interest strategy” is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class; a “reversal strategy” is established by combining a short security position with a short put and a long call position that shares the same strike and expiration; a “conversion strategy” is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration; and a “jelly roll strategy” is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

¹¹ The proposed rule change also appends: Footnote 39 to the Program, which provides that each Trading Permit Holder is responsible for notifying the Exchange of all of its affiliates and is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate in a form and manner to be determined by the Exchange. An “affiliate” is defined as having at least 75% common ownership between two entities as reflected on each entity’s Form BD, Schedule A; and footnote 41 to the Program, which provides, in relevant part, that Position Compression Cross (“PCC”) transactions will not count towards any volume thresholds.

¹² The proposed rule change corrects an inadvertent grammar error by changing “to be” to “are”.

¹³ The proposed rule change updates the format of this parenthetical to be consistent with similar parentheticals throughout footnote 11.

executing broker and clearing firm are on both sides of the transaction for open outcry. The Exchange notes that TPHs are permitted to make post-trade updates to their transactions, which may include changes to the executing or contra broker, the executing or contra clearing firm, and capacity. Such post-trade updates may potentially alter whether an order qualifies as a facilitation order for the purposes of the Fees Schedule. As such, the proposed rule change updates the definition of facilitation order to clarify that the executing broker and clearing firm must be the same on both sides of the trade following any post-trade changes made on the trade date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹⁴ in general, and furthers the requirements of Section 6(b)(4),¹⁵ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. As stated above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange's trading floor, which the Exchange believes would enhance market quality to the benefit of all TPHs. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,¹⁶ including the Exchange,¹⁷ and are

reasonable, equitable and non-discriminatory because they are open to all TPHs on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including incentive programs that offer rebates or rates that apply based upon TPHs achieving certain volume thresholds.

In particular, the Exchange believes that the proposed Floor Broker Sliding Scale Rebate Program is reasonable and equitable because it is designed to incentivize increased order flow in multiply-listed options to the Exchange's trading floor. The Exchange believes that it is reasonable to apply the proposed Program to Non-Customer order flow as the Exchange recognizes that market participants that submit Non-Customer order flow provide different, yet key, liquidity to the Exchange's trading floor. For instance, Market-Maker activity, including Non-TPH Market-Makers ("M" and "N" capacities), facilitates tighter spreads and signals additional corresponding increase in order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities. Clearing TPHs ("F" capacity), Non-Clearing TPH Affiliates ("L" capacity), Broker-Dealers ("B" capacity), and Joint Back-Offices ("J" capacity) can be an important source of liquidity as they specifically facilitate the execution of customer orders, which, in turn, adds transparency, promotes price discovery and serves to attract other participants, thus providing continuous liquidity to the Exchange. Also, Professionals ("U" capacity) generally provide a greater competitive stream of order flow (by definition, more than 390 orders in listed options per day on average during a calendar month), thus, providing increased competitive execution and improved pricing opportunities for all market participants. The Exchange further believes that applying the proposed Program to Non-Strategy, multiply-listed order flow is reasonable

as it is designed to compete with other option exchanges' for floor broker non-strategy order flow as other options exchanges' have fee schedules in place that offer similar incentives to their floor brokers that submit non-strategy orders for execution in open outcry.¹⁸

The Exchange believes that the proposed rebate amounts are reasonable as they are comparable to the rebates or reduced rates offered under similar volume-based incentive programs offered in the Fees Schedule.¹⁹ For example, the Liquidity Provider Sliding Scale provides a reduced fee of between \$0.17 to \$0.03 per contract for Market-Maker orders (which are assessed a standard rate of \$0.23 per contract) where a Market-Maker meets certain volume thresholds, a reduction of which the Exchange believes is comparable to the proposed rebates that range from \$0.01 to \$0.06. The Exchange also believes that it is reasonable to offer higher rebates for Non-Firm Facilitated order flow than for Firm Facilitated order flow (*i.e.*, where the same executing broker and clearing firm are on both sides of the transaction) because it wishes to further incentivize order flow that attracts contra-side interest from a wider variety of market participants, which may further contribute towards a robust, well-balance market ecosystem. Further, Firm Facilitated orders (*i.e.*, orders yielding fee code FF) are not currently charged any fees, as compared to Non-Firm Facilitated orders, which are assessed fees. The Exchange also notes that excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF and XSP from the proposed program (thus, incentivizing increased order flow in multiply-listed options), as well as aggregating a TPH's volume with the volume of its affiliates for the purposes of calculating Step-Up Volume each month, is consistent with the manner in which other incentive programs under the Fees Schedule exclude the same products²⁰ and/or aggregate volume and credits.²¹ Additionally, the Exchange notes that Floor Brokers already have an

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See NYSE Arca Options Fee Schedule, FB Professional Customer Manual Program, which provides a credit of \$013 per contract to floor brokers that increase their monthly ADV (in certain capacities) by a certain percentage over a baseline, and excludes strategy executions from the program; and NYSE American Options Fee Schedule, E.1, [sic] Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program"), which offers participating floor brokers annual rebates for achieving growth in manual volume by a certain percentage as measured against certain benchmarks, and does not apply to volume executed as part of Strategy Execution Fee Cap (that is, strategy orders).

¹⁷ See Cboe Options Fees Schedule, Liquidity Provider Sliding Scale, Liquidity Provider Sliding Scale Adjustment Table, Volume Incentive Program, and Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale, each of which provides for a scale of rebates or reduced fees applicable to certain orders for various types of TPHs that meet certain volume thresholds under each.

¹⁸ See *supra* note 15 [sic]; and BOX Options Fee Schedule, Section II.C, Qualified Open Outcry ("QOO") Order Rebate, which offers a rebate for floor broker orders \$0.075 or \$0.05 per contract (depending on the capacity) and does not apply to Strategy QOO Orders.

¹⁹ See *supra* note 16.

²⁰ See *e.g.*, Cboe Options Fees Schedule, Liquidity Provider Sliding Scale, Break-Up Credits table, Order Routing Subsidy Program, and Complex Order Routing Subsidy Program.

²¹ See *e.g.*, Cboe Options Fees Schedule, Volume Incentive Program (VIP), Affiliate Volume Plan, QCC Rate Table, and Market-Maker EAP Appointments Sliding Scale.

opportunity to receive discounts on their fees for certain proprietary products under the Floor Brokerage Fees Discount Scale.²²

In addition to this, the Exchange believes that the proposed update to the definition of facilitation orders in footnote 11 of the Fees Schedule is reasonable because it is designed to ensure and make clear that post-trade edits to orders will be considered in determining whether an order qualifies as a facilitation order and is appended fee code FF and the appropriate corresponding fees or fee waiver. The Exchange believes that it is appropriate to determine, for the purposes of the Fees Schedule, whether a transaction is considered a facilitation order following any same day post-trade updates made to the transaction because such post-trade edits may potentially alter whether the same executing broker and clearing firm are on both sides of a transaction, which is required in order for a transaction to qualify as a facilitation order. The proposed rule change is reasonable as it does not alter the definition of a facilitation order but merely clarifies the point at which the System will evaluate whether a transaction qualifies as such.

The Exchange believes that the proposed Floor Broker Sliding Scale Rebate Program represents an equitable allocation of fees and is not unfairly discriminatory because the Program, as proposed, will apply uniformly to all qualifying TPHs, in that all TPHs that submit the requisite order flow (*i.e.*, Non-Customer, Non-Strategy, Floor Broker Volume in multiply-listed options) have the opportunity to compete for and achieve the proposed tiers. The proposed rebates will apply automatically and uniformly to all TPHs that achieve the proposed corresponding criteria. The Exchange believes that the application of the proposed Program to TPHs that submit Non-Customer order flow is equitable and not unfairly discriminatory because such market participants provide unique and important liquidity to the Exchange's trading floor. Such order flow, as described above, may result in overall tighter spreads, attracting order flow from other market participants, more execution opportunities at improved prices, and/or deeper levels of liquidity, which may ultimately improve price transparency, provide continuous trading opportunities and enhance market quality on the Exchange, to the benefit of all market participants. The Exchange also notes

that the Fees Schedule currently provides for many other incentive opportunities and rebate or reduced fee opportunities for Customer orders.²³

In addition to this, while the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular TPH qualifying for the proposed tiers, the Exchange believes that at least five TPHs will reasonably be able to compete for and achieve the proposed criteria across the four proposed tiers by submitting the requisite volume. The Exchange notes, however, that the proposed tiers are open to any TPH that submits the requisite order flow to satisfy the tiers' criteria. The Exchange also does not believe the proposed tiers will adversely impact any TPH's pricing or ability to qualify for other fee programs. Rather, should a TPH not meet the criteria in any of the proposed tiers, the TPH will merely not receive the corresponding rebate.

Finally, the Exchange believes that the proposed update to the definition of a facilitation order in footnote 11 of the Fees Schedule is equitable and not unfairly discriminatory because it will continue to apply the fee code FF (Facilitation Firm) automatically and uniformly to all orders that qualify as facilitation orders. The proposed update just clarifies that a transaction will be evaluated as to whether it qualifies as a facilitation order for the purposes of the Fees Schedule after any same day, post-trade edits are made to that transaction. The Exchange believes that considering potential post-trade edits made on the same trade date will more appropriately capture whether a transaction has the same executing broker and clear firm on both sides of the trade.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to the floor of a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and

price improvement opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁴

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed Floor Broker Sliding Scale Rebate Program will apply equally to all similarly situated TPHs that submit the requisite order flow. That is, the proposed fees will apply equally to all Non-Customer, Non-Strategy, Floor Broker orders in multiply-listed options. The Exchange does not believe that the application of the proposed Program to Non-Customer orders will impose any significant burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange recognizes that Non-Customer participation in the markets is essential to a robust hybrid market ecosystem as each contributes unique and important liquidity to the Exchange's trading floor, as described above. Such Non-Customer order flow may result in overall tighter spreads, attracting order flow from other market participants, more execution opportunities at improved prices, and/or deeper levels of liquidity, which may ultimately improve price transparency, provide continuous trading opportunities and enhance market quality on the Exchange, to the benefit of all market participants. The Exchange again notes that the Fees Schedule currently provides for many other incentive opportunities and rebate or reduced fee opportunities for Customer orders.²⁵ The Exchange also does not believe that the update to the definition of facilitation orders will impose any significant burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will continue to apply the fee code FF (Facilitation Firm) automatically and uniformly to all orders that qualify as facilitation orders. As stated above, the proposed update merely clarifies that a transaction will be evaluated as to whether it qualifies as a facilitation order following any same day, post-

²² See Cboe Options Fees Schedule, Floor Brokerage Fees Discount Scale.

²³ See generally Cboe Options Fee Schedule, which generally assesses lower transaction fees for Customer orders as compared to other capacities; see also Cboe Options Fee Schedule, Customer Large Trade Discount, Break-Up Credits table, Select Customer Options Reduction ("SCORE") Program, and QCC Rate Table.

²⁴ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

²⁵ See *supra* note 21.

trade edits, which will more appropriately capture whether a transaction has the same executing broker and clear firm on both sides of the trade.

The Exchange also does not believe that the proposed changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, competing options exchanges have similar incentive programs and discount opportunities in place in connection with floor broker order flow.²⁶ The Exchange notes that the proposed update in connection with facilitation orders is not competitive in nature and merely clarifies a step in the billing process for qualifying facilitation orders. Additionally, and as previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 16% of the market share.²⁷ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁸ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[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’. . . .”²⁹ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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) of the Act³⁰ and paragraph (f) of Rule 19b-4³¹ 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 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-CBOE-2021-037 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.

²⁹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2021-037. 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-CBOE-2021-037 and should be submitted on or before July 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12248 Filed 6-10-21; 8:45 am]

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²⁶ See *supra* notes 15 [sic] and 17.

²⁷ See *supra* note 3.

²⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

³² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92116; File No. SR–CBOE–2021–036]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules in Connection With the Number of Legs of a Complex Order That May Be Entered on a Single Order Ticket at the Time of Systemization

June 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on May 25, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Rules in connection with the number of legs of a complex order that may be entered on a single order ticket at the time of systemization. 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules in connection with the number of legs of a complex order that may be entered on a single order ticket at the time of systemization.

Specifically, Rule 5.7(f) currently provides that each order, cancellation of, or change to an order transmitted to the Exchange must be “systematized” in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the Exchange’s trading floor. An order is systematized if (1) the order is sent electronically to the Exchange or (2) the order that is sent to the Exchange nonelectronically (e.g., telephone orders) is input electronically into the Exchange’s systems contemporaneously upon receipt on the Exchange, and prior to representation of the order. Any proprietary system approved by the Exchange on the Exchange’s trading floor that receives orders is considered an Exchange system for purposes of this Rule.⁵ Regarding the systemization of complex orders, Rule 5.7(f)(4) particularly provides that complex orders of 12 legs or less (one leg of which may be for an underlying security or security future, as applicable) must be entered on a single order ticket at time of systemization. If permitted by the Exchange (which the Exchange will announce by Regulatory Circular), complex orders of more than 12 legs (one leg of which may be for an underlying security or security future, as applicable) may be split across multiple order tickets, if the Trading Permit Holder representing the complex order uses the fewest order tickets necessary to systematize the order and identifies for the Exchange the order tickets that are part of the same complex order (in a form and manner prescribed by the Exchange).

The Exchange notes that it adopted the 12 leg maximum per order ticket in 2015 as a result of Exchange system limitations.⁶ At that time, the Exchange

could only support the processing of up to 12 legs on a single order ticket for representation and execution in open outcry as a complex order.⁷ Based on customer feedback, the Exchange understands that there are order entry and execution systems used by Trading Permit Holders (“TPHs”) that are able to support at least 16 legs. If a TPH with a system that can support 16 legs on a single order ticket receives a complex order for more than 12 legs to route to an Exchange system for execution on the Exchange’s trading floor, it must break up the order to comply with Rule 5.7(f)(4). As such, the Exchange proposes to amend Rule 5.7(f)(4) to increase the 12 leg maximum per single order ticket to a maximum of 16 legs per single order ticket at time of systemization. Pursuant to proposed Rule 5.7(f)(4), complex orders of 16 legs or less (one leg of which may be for an underlying security or security future, as applicable) must be entered on a single order ticket at time of systemization and orders of more than 16 legs may be split across multiple order tickets.⁸ The TPH representing the complex order must continue to use the fewest order tickets necessary to systematize the order and to identify for the Exchange the order tickets that are part of the same complex order. In addition, the proposed rule change also

(May 21, 2015), 80 FR 30514 (May 28, 2015) (SR–CBOE–2015–048).

⁷ Exchange systems have, since 2015, been enhanced and are able to support a greater number of legs per order ticket.

⁸ As similarly noted in the 2015 filing that implemented the 12 leg per order requirement currently reflected in Rule 5.7(f)(4), TPHs will not be required to make changes to their own or third-party vendor’s order entry and execution systems. However, to the extent a TPH wants to represent and execute a complex order (including SPX Combo Orders) in open outcry, the order must be entered on a single order ticket and cannot exceed 16 legs or, if for more than 16 legs, entered on fewest order tickets necessary (linked in a form and manner prescribed by the Exchange). For example, if a TPH’s order entry and execution system currently only supports the open outcry processing of a complex order with up to 12 legs, the system would not need to be enhanced if the TPH does not intend to represent and execute complex orders with more than 12 legs. If the TPH intends to represent and execute complex orders with more than 12 legs (i.e., complex orders with 13 to 16 legs), then the TPH may need to enhance its existing system or utilize a third-party vendor’s order entry and execution system that supports the open outcry processing of such orders on a single order ticket. See also SR–CBOE–2015–011, *supra* note 6. The Exchange additionally notes that it plans to implement the proposed change approximately 60 days after disseminating notice of the proposed change to its TPHs. The Exchange believes that this will provide TPHs that intend to represent and execute complex orders with more than 12 legs with ample time to enhance, if necessary, their existing systems or utilize a third-party vendor’s order entry and execution system that supports the open outcry processing of such orders on a single order ticket.

⁵ See Rule 5.7.03.

⁶ See Securities Exchange Act Release No. 74169 (January 29, 2015), 80 FR 6145 (February 4, 2015) (SR–CBOE–2015–011), which implemented the 12 leg per order requirement in current Rule 5.7(f)(4); see also Securities Exchange Act Release No. 75026

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

updates paragraph (3) under the definition of SPX Combo Order⁹ in Rule 5.6(c), which currently reflects the same 12 leg maximum per single order ticket at time of systemization, to provide that an SPX Combo Order for 16 legs or fewer must be entered on a single order ticket at time of systemization and that an SPX Combo Order for more than 16 legs may be represented or executed as a single SPX Combo Order in accordance with Rule 5.85(e) if it is split across multiple order tickets and the Trading Permit Holder representing the SPX Combo Order uses the fewest order tickets necessary to systematize the order and identifies for the Exchange the order tickets that are part of the same SPX Combo Order.

Due to Exchange system limitations that may prevent a complex order with more than a certain number of legs from being entered on a single order ticket for representation and execution in open outcry, the single order ticket leg limitations in place are intended to provide consistency in processing and in order to continue to enhance the Exchange's audit trail by reducing the number of tickets required for larger complex orders. Notwithstanding the necessity of order ticket leg maximums given Exchange system limitations, the Exchange notes that splitting an order across multiple order tickets takes additional time, can leave room for error, and requires additional TPH administrative resources as a TPH must identify for the Exchange the order tickets that are part of the same complex order (in a form and manner prescribed by the Exchange). The proposed rule change is designed to reduce the number of complex orders that TPHs need to break up into multiple order tickets. As a result, the proposed rule change ultimately allows TPHs to more effectively and efficiently systematize complex orders for execution in open outcry.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will allow TPHs to submit order tickets for their open outcry complex orders (including SPX Combo Orders) in a manner that is more compatible with the processing capacity that their order entry systems are able to support today,¹³ thus reducing the number of complex orders that need to be broken up into multiple order tickets. By allowing TPHs to more effectively and efficiently systematize complex orders with a large amount of legs for execution in open outcry within the processing capacity limits of the order entry systems they use, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system. The Exchange notes that the proposed rule change does not impact the current manner in which TPHs may represent a complex order in open outcry, nor does it impact the permissible number of legs or permissible ratios of complex orders. The proposed rule change merely increases the leg limit per single order ticket, which may increase trading efficiencies for TPHs by allowing TPHs to reduce the number of order tickets submitted for their larger complex orders,¹⁴ while continuing to provide consistency in processing and further enhancing the Exchange's audit trail (as fewer orders will require multiple tickets). This, in turn, serves to protect investors by promoting transparency, assisting in surveillance, and providing the Exchange the ability to better enforce compliance by its TPHs with the Act and the Exchange Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because a maximum number of legs per single order ticket will continue apply equally to all market participants that systematize complex orders (including SPX Combo Orders) for execution in open outcry. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is not competitive in nature nor does it relate to trading on the Exchange. Rather, it relates solely to the manner in which market participants systematize complex orders for trading on the Exchange's trading floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

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

⁹ An "SPX Combo Order" is an order to purchase or sell one or more SPX option series and the offsetting number of SPX combinations defined by the delta. See Rule 5.6(c).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² *Id.*

¹³ See also *supra* note 7.

¹⁴ See also *supra* note 8.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-CBOE-2021-036 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-CBOE-2021-036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-CBOE-2021-036, and should be submitted on or before July 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12243 Filed 6-10-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92123; No. SR-NYSEArca-2021-50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

June 7, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 2, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding the charges applicable to Manual transactions by NYSE Arca Market Makers and Lead Market Makers. The Exchange proposes to implement the fee change effective June 2, 2021.⁴ The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR-NYSEArca-2021-34), then withdrew and refiled on May 12, 2021 (SR-NYSEArca-2021-42) and May 21, 2021 (SR-NYSEArca-2021-45), which latter filing the Exchange withdrew on June 2, 2021.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule regarding the charges for Manual executions by NYSE Arca Market Makers ("Market Makers") and Lead Market Makers ("LMMs"). Currently, Market Makers are charged \$0.25 per contract for Manual executions, and LMMs are charged \$0.18 per contract for Manual executions.⁵

The Exchange proposes to modify the rates charged for Manual executions to \$0.35 per contract for Market Makers and \$0.30 per contract for LMMs. The proposed rate for Market Makers is competitive and intended to align the Exchange's fees for Manual transactions by Market Makers with those charged by other markets.⁶ The proposed rate for LMMs would reduce the existing disparity between rates charged to LMMs and Market Makers from seven cents (\$0.07) to five (\$0.05), which disparity the Exchange believes continues to be justified given the heightened obligations and additional fees imposed on LMMs.⁷

⁵ See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR MANUAL EXECUTIONS—PER CONTRACT.

⁶ See, e.g., Nasdaq PHLX LLC ("Phlx") Pricing Schedule, available at: <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (providing \$0.35 per contract rate for manual transactions by market makers); Cboe Exchange, Inc. ("Cboe") Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing \$0.35 per contract rate for manual transactions by market makers).

⁷ See Rules 6.37A–O(b) (setting forth the continuous quoting obligations of LMMs to provide two-sided quotations in its appointed issues for 90% of the time the Exchange is open for trading in each issue) and 6.82–O(c) (regarding additional obligations specific to LMMs, including that LMMs that operate on the Trading Floor are required to be

Continued

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁰

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹¹ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.¹²

present every day). See Fee Schedule, NYSE Arca General Options and Trading Permit (OTP) Fee, Lead Market Maker Rights (setting forth the Rights Fee assessed on each issue in an LMM’s allocation, with rates based on the Average National Daily Customer Contracts).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (“Reg NMS Adopting Release”).

¹¹ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹² Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange’s market share in multiply-listed equity and ETF options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The proposed rule change is designed to bring the Exchange’s fees for Market Maker Manual executions into alignment with those charged on other markets with Trading Floors. The Exchange believes it is reasonable to increase certain fees, similar to fees assessed by competing options exchanges for similar transactions, and notes that LMMs will continue to be charged lower fees than those assessed by competing options exchanges for similar transactions.¹³ The Exchange also believes that it is reasonable to continue to offer LMMs lower fees than Market Makers for Manual transactions given that LMMs are subject to heightened obligations and additional monthly Rights Fees.¹⁴

The Exchange believes that the proposed increased charge for Manual executions by Market Makers and LMMs but not for other market participants is reasonable because the resulting disparity would align the Exchange’s fees for Manual executions with the fees charged on other exchanges.¹⁵ In addition, the Exchange believes that other pricing incentives offered by the Exchange would continue to encourage Market Makers and LMMs to conduct Manual transactions on the Exchange.¹⁶

¹³ See *supra* note 6.

¹⁴ See *supra* note 7.

¹⁵ The Exchange does not impose any fee on Manual transactions by Customers but does charge \$0.25 per contract for Manual transactions by Firms, Broker-Dealers and Professional Customers, which rates are consistent with fees charged these market participants on other exchanges. See, e.g., *supra* note 6, PHLX Pricing Schedule and Cboe Fee Schedule (both exchanges imposing no charge for manual transactions by customers and imposing a \$0.25 per contract rate for manual transactions by firms, broker-dealers and professional customers).

¹⁶ See e.g., Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule Regarding the Limits on Fees for Options Strategy Executions, Securities Exchange Act Release No. 90949 (January 19, 2021), 86 FR 7152 (January 26, 2021) (SR–NYSEArca–2021–06) (reducing the cap on strategy executions from \$1,000 to \$200 for OTP Holders that execute at least 25,000 monthly billable contract sides in Strategy Executions) and Fee Schedule, Limit of Fees on Options Strategy Executions. While the reduction to the cap on Strategy Executions is available to all OTP Holders, the Exchange notes that Maker Makers and LMMs have a time and place advantage by virtue of their

The Exchange thus believes the proposed changes, even though they are increased fees, would not discourage Market Makers and LMMs from continuing to conduct Manual executions on the Exchange and would continue to attract volume and liquidity to the Exchange generally and would therefore benefit all market participants (including those that do not participate in Manual executions) through increased opportunities to trade.

Finally, to the extent the proposed fees do not discourage Market Makers and LMMs from continuing to conduct Manual executions on the Exchange, the Exchange believes the proposed changes would continue to improve the Exchange’s overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to maintain its market share relative to its competitors.

The Proposed Rule Change Is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the type of business transacted on the Exchange, and Market Makers and LMMs can opt to participate in Manual executions or not. The Exchange notes that the increased fees for Manual executions by Market Makers and LMMs, but not for other market participants, represents an equitable allocation of fees given that the proposed fees (and resulting disparity) are consistent with fees charged for Manual executions by market makers on other exchanges.¹⁷ The Exchange also believes that continuing to offer LMMs lower fees than Market Makers is an equitable allocation of fees given that LMMs are subject to heightened obligations and additional fees set forth in the Exchange’s Fee Schedule.¹⁸

Moreover, even though the proposed changes increase the fees applicable to Manual executions by Market Makers and LMMs, the Exchange does not believe they will discourage such executions on the Exchange or the aggregation of such executions at the Exchange as a primary execution venue, including because of other pricing incentives available to such participants

presence on the Trading Floor to participate in such executions and therefore benefit from the reduced cap.

¹⁷ See *supra* notes 6 and 15.

¹⁸ See *supra* note 7.

on the Exchange.¹⁹ To the extent that the proposed changes continue to attract Manual executions to the Exchange, this order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would continue to improve market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would apply to all Market Makers and LMMs conduct Manual executions on the Exchange on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange, and Market Makers and LMMs are not obligated to participate in Manual executions on the Exchange. Rather, the proposal is designed to continue to encourage the use of the Exchange as a primary trading venue (if they have not done so previously) by maintaining the Trading Floor for Manual executions.

The Exchange also believes that increasing fees for Manual executions by Market Makers, but not other market participants, is not unfairly discriminatory given that the proposed rates (and resulting disparity) are a competitive response to rates charged on competing options exchanges for manual executions by market makers and because these participants may available themselves of other reduced fees and incentives offered by the Exchange.²⁰ The Exchange also believes that it is not unfairly discriminatory to continue to offer LMMs lower fees than Market Makers given that LMMs are subject to heightened obligations and additional fees set forth in the Exchange's Fee Schedule.²¹

To the extent that the proposed change assists the Exchange in continuing to attract Manual executions to the Trading Floor, this order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would contribute to market quality for all market participants on the Exchange and, as a consequence, attract more

order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting volume and liquidity would continue to provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would be consistent with charges for similar business at other markets. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²²

Intramarket Competition. The proposed change is designed to continue to promote the use of the Exchange as a primary trading venue by maintaining the Trading Floor for Manual executions, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. The Exchange believes that the proposed increased fees for Manual executions by Market Makers and LMMs but not for other market participants would not impose any burden on intermarket competition that is not necessary or appropriate because the proposed fees (and resulting disparity) are consistent with fees charged for Manual executions by market makers on other exchanges and because these participants may available themselves of other reduced fees and incentives offered by the Exchange.²³ The Exchange believes that the proposed modifications to the rates applicable to Manual executions by Market Makers and LMMs will not

discourage those market participants from continuing to conduct Manual executions on the Exchange (including because LMMs will continue to receive lower fees than those assessed by competing options exchanges for similar transactions). To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the continued market liquidity. Enhanced market quality and increased transaction volume that results from the increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its mechanisms and fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.²⁴ Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.²⁵

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees to be more closely aligned with fees charged by other markets with Trading Floors for similar transactions.²⁶ The Exchange also believes that the proposed changes would continue to promote competition between the Exchange and other execution venues by encouraging orders to be sent to the Exchange for execution. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

²⁴ See *supra* note 11.

²⁵ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange's market share in multiply-listed equity and ETF options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

²⁶ See *supra* notes 6 and 15.

¹⁹ See *supra* note 16.

²⁰ See *supra* notes 6, 15 and 16.

²¹ See *supra* note 7.

²² See Reg NMS Adopting Release, *supra* note 10, at 37499.

²³ See *supra* notes 6, 15 and 16.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ²⁷ of the Act and subparagraph (f)(2) of Rule 19b-4 ²⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ²⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2021-50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/>

[rules/sro.shtml](#)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-50, and should be submitted on or before July 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12250 Filed 6-10-21; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 11428]

60-Day Notice of Proposed Information Collection: Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card

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 *August 10, 2021*.

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-2021-0012 in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* PPTFormsOfficer@state.gov.
- *Regular Mail:* Send written comments to: Passport Forms Officer, U.S. Department of State, CA/PPT/S/PMO, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166-1199.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

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 Kim Makle, Program Manager, U.S. Department of State, CA/PPT/S/PMO, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166-1199, who may be reached at PPTFormsOfficer@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card.
- *OMB Control Number:* 1405-0014.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS-64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 529,122.
- *Estimated Number of Responses:* 529,122.
- *Average Time per Response:* 5 minutes.
- *Total Estimated Burden Time:* 44,094 hours.
- *Frequency:* On occasion.
- *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.

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19 b-4(f)(2).

²⁹ 15 U.S.C. 78s(b)(2)(B).

³⁰ 17 CFR 200.30-3(a)(12).

- 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 Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a *et seq.*, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Department regulations provide that individuals whose valid or potentially valid U.S. passports were lost or stolen must report the lost or stolen passport to the Department of State before receiving a new passport so that the lost or stolen passport can be invalidated (22 CFR parts 50 and 51). The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS-64 collects information identifying the person who held the valid lost or stolen passport and describing the circumstances under which the passport was lost or stolen. As required by the cited authorities, we use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport.

Methodology

Passport bearers may submit their form electronically on www.travel.state.gov or call the National Passport Information Center at 1-877-487-2778. A person may also download the form from the internet or obtain one at any passport agency or acceptance facility.

Rachel M. Arndt,

Deputy Assistant Secretary, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2021-11754 Filed 6-10-21; 8:45 am]

BILLING CODE 4710-06-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1313]

North Coast Railroad Authority— Adverse Discontinuance of Lease & Operating Authority—Northwestern Pacific Railway Co., In Humboldt, Trinity and Mendocino Counties, Cal.

By petition filed on March 9, 2021, the North Coast Railroad Authority (NCRA), an agency of the State of California, seeks exemptions from certain statutory provisions and waivers of certain regulatory requirements regarding the filing of a third-party, or “adverse,” application for discontinuance. Specifically, NCRA states that it intends to ask the Board to terminate the operating rights of Northwestern Pacific Railway Company over an NCRA rail line extending from milepost 142.5, at Outlet Station, to the end of the line at milepost 302.86, at Fairhaven, on the Samoa Branch, including the Korblex/Korbel Branch¹ and the Carlotta Branch in Mendocino, Trinity, and Humboldt Counties, Cal.² (Pet. 2, 11.)

A proceeding will be instituted to determine the merits of the petition for exemptions and waivers pursuant to 49 U.S.C. 10502(b).

It is ordered:

1. A proceeding is instituted under 49 U.S.C. 10502(b).

2. Notice of this decision will be published in the **Federal Register**.

3. This decision is effective on its service date.

Decided: June 7, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2021-12309 Filed 6-10-21; 8:45 am]

BILLING CODE 4915-01-P

¹ In a separate docket, NCRA filed a verified notice of exemption to abandon 175.84 miles of rail line from milepost 139.5 at Commercial Street in Willits, to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near Samoa, and milepost 301.8 near Korbel. (See NCRA Verified Notice 1, *N. Coast R.R.—Aban. Exemption—in Mendocino, Trinity & Humboldt Cnty., Cal.*, AB 1305X.)

² On April 22, 2021, the Timber Heritage Association filed a notice of intent to participate with comments partially opposing NCRA’s petition, to which NCRA replied on April 30, 2021.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35258 (Sub-No. 1)]

Mississippi Central Railroad Co.— Amended Lease and Operation Exemption—Line of Tishomingo County, Mississippi

Mississippi Central Railroad Co. (MSCI), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to renew its lease and continue to operate a line of railroad owned by, and located in, Tishomingo County, Miss., between Norfolk Southern Railway Company’s Iuka Wye at milepost 0.0 and the Tri-State Commerce Park at milepost 10.0 (the Line).

According to the verified notice, MSCI has leased and operated the Line since 2009.¹ MSCI states that the lease for the Line expired on December 31, 2019, and that, pursuant to a recently signed Rail Line Lease & Operating Agreement (Agreement), the parties have agreed to extend the lease through December 31, 2023, with the option for MSCI thereafter to extend the lease for two additional four-year terms in accordance with the terms of the Agreement. MSCI states that it will continue to operate and provide common carrier service to shippers on the Line.

MSCI certifies that its projected annual revenues from this transaction will not result in its becoming a Class I or Class II rail carrier and will not exceed \$5 million.

The earliest this transaction may be consummated is June 26, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than June 18, 2021.

All pleadings, referring to Docket No. FD 35258 (Sub-No. 1), should be filed with the Surface Transportation Board via e-filing on the Board’s website. In addition, a copy of each pleading must be served on MSCI’s representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

According to MSCI, this action is categorically excluded from environmental review under 49 CFR

¹ See *Miss. Cent. R.R.—Change in Operators Exemption—Tishomingo R.R.*, FD 35258 (STB served July 10, 2009).

1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: June 8, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2021-12325 Filed 6-10-21; 8:45 am]

BILLING CODE 4915-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notification of the First United States-Mexico-Canada Agreement Labor Council Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Parties to the United States-Mexico-Canada Agreement (USMCA) intend to hold the first meeting of the Labor Council virtually, on June 29, 2021. The session will include a government-to-government Labor Council meeting and a virtual public session on implementation of the USMCA labor chapter. The Office of the United States Trade Representative (USTR) and the U.S. Department of Labor (DOL) seek suggestions for topics to be discussed during the Labor Council meeting and questions from the public in advance of the public session.

DATES: June 29, 2021: The Parties will host a virtual public session on USMCA Chapter 23 (Labor) implementation from 12:00 p.m. to 2:00 p.m. EDT.

June 22, 2021: Deadline for submission of written suggestions for the Labor Council meeting topics and questions for the public session.

ADDRESSES: Submit written comments with the subject line 'USMCA Labor Council Meeting' to Brenna Dougan, Director for Labor Affairs, USTR by email to USMCA.labor@ustr.eop.gov, and Samantha Tate, Division Chief for USMCA Monitoring and Enforcement, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, DOL by email to ILAB-Outreach@DOL.gov.

FOR FURTHER INFORMATION CONTACT: Brenna Dougan, Director for Labor Affairs, USTR at 202-395-7391, or Samantha Tate, Division Chief for USMCA Monitoring and Enforcement, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, DOL at 202-693-4920.

SUPPLEMENTARY INFORMATION:

I. Background

Article 23.14 of the USMCA establishes a Labor Council composed of senior government representatives from trade and labor ministries that must meet within one year of the date of entry into force of the USMCA. Thereafter, the Labor Council meets every two years, unless the Parties decide otherwise. The Labor Council may consider any matter within the scope of Chapter 23 (Labor) and perform other functions as the Parties may decide. In conducting its activities, including meetings, the Labor Council must provide a means for receiving and considering the views of interested persons on matters related to the labor chapter. If practicable, meetings will include a public session or other means for Council members to meet with the public to discuss matters relating to the implementation of Chapter 23 (Labor). Labor Council decisions and reports are made by consensus and will be made publicly available, unless the Council decides otherwise. The Labor Council issues a joint summary report or statement on its work at the end of each Council meeting.

II. Labor Council Meeting

The Labor Council will include a government-to-government session to discuss Parties' Chapter 23 (Labor) obligations and a virtual public session. The government-to-government session will not be open to the public.

III. Public Session on USMCA Chapter 23 Implementation

The Labor Council invites members of the public to attend a virtual public session on June 29, 2021, from 12:00 p.m. to 2:00 p.m. EDT, to address USMCA Chapter 23 (Labor) implementation. At the session, the Labor Council will welcome questions, input, and information concerning the implementation of Chapter 23 obligations. Details on how to access the public session will be made available by June 22 on the USTR website at <https://ustr.gov/issue-areas/labor>, and on the DOL website at <https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca>.

IV. Comments

DOL and USTR invite comments suggesting topics for the United States government to consider as it prepares for the Labor Council meeting, and specific questions that could be addressed at the public session. When preparing comments, we encourage submitters to refer to Chapter 23 of the USMCA (<https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/>

[Text/23-Labor.pdf](#)) and the USMCA Interagency Labor Committee for Monitoring and Enforcement Interim Procedural Guidelines for Petitions Pursuant to the USMCA (<https://www.federalregister.gov/documents/2020/06/30/2020-14086/interagency-labor-committee-for-monitoring-and-enforcement-procedural-guidelines-for-petitions>).

Joshua Kagan,

Acting Assistant U.S. Trade Representative for Labor, Office of the United States Trade Representative.

[FR Doc. 2021-12321 Filed 6-10-21; 8:45 am]

BILLING CODE 3290-F1-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program for San Antonio International Airport, Bexar County, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of acceptance of a noise exposure map.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by City of San Antonio Aviation Department for San Antonio International Airport is in compliance with applicable statutory and regulatory requirements.

DATES: The effective date of the FAA's determination on the noise exposure map is June 1, 2021.

FOR FURTHER INFORMATION CONTACT: John MacFarlane, 10101 Hillwood Parkway, Fort Worth, Texas 76177, 817-222-5681.

SUPPLEMENTARY INFORMATION: The FAA determined the noise exposure map submitted by the City of San Antonio Aviation Department for San Antonio International Airport, is in compliance with applicable statutory and regulatory requirements, effective June 1, 2021. Under Title 49 United States Code (U.S.C.) section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA, noise exposure maps depicting non-compatible uses as of the date such map is submitted, a description of estimated aircraft operations during a forecast period that is at least five years in the future and how those operations will affect the map. A noise exposure map must be prepared in accordance with Title 14 Code of Federal Regulations (CFR) part 150, the regulations

promulgated pursuant to section 47502 of the Act, and developed in consultation with public agencies and planning authorities in the area surrounding the airport, state and Federal agencies, interested and affected parties in the local community, and aeronautical users of the airport. In addition, an airport operator that submitted a noise exposure map, which the FAA determined is compliant with statutory and regulatory requirements, may submit a noise compatibility program for FAA approval that sets forth measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA completed its review of the noise exposure map and supporting documentation submitted by the City of San Antonio Aviation Department and determined the noise exposure map and accompanying documentation are in compliance with applicable requirements. The documentation that constitutes the Noise Exposure Map includes: Table 4–1 Annual Aircraft Operations by Aircraft Category; Figure 2–3 Airport Diagram; Table 4–5 Aircraft Arrival; Table 4–6 Departure Runway Use; Figure 4–6 Modeled Fixed-Wing Flight Tracks—Runways 31L and 31R; Figure 4–7 Modeled Fixed-Wing Flight Tracks—Runways 13L and 13R; Figure 4–8 Modeled Fixed-Wing Flight Tracks—Runway 4; Figure 4–9 Modeled Fixed-Wing Flight Tracks—Runway 22; Figure 4–3 Nighttime Runway Utilization—2021 Existing Conditions; and Figure 4–5 Nighttime Runway Utilization—2026 Future Conditions. This determination is effective on June 1, 2021.

FAA's determination on an airport's noise exposure map is limited to a finding that the noise exposure map was developed in accordance with the Act and procedures contained in 14 CFR part 150, Appendix A. FAA's acceptance of an NEM does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties within noise exposure contours depicted on a noise exposure map, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the

provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA review and acceptance of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted a noise exposure map or with those public and planning agencies with which consultation is required under section 47503 of the Act. The FAA relied on the certification by the airport operator, under of 14 CFR 150.21 that the required consultations and opportunity for public review has been accomplished during the development of the noise exposure maps.

Copies of the noise exposure map and supporting documentation and the FAA's evaluation of the noise exposure maps are available for examination at the following locations: Federal Aviation Administration, Airports Division, 10101 Hillwood Parkway, Fort Worth, Texas 76177, and San Antonio International Airport, 9800 Airport Boulevard, San Antonio, Texas 78216. Questions may be directed to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Issued in Fort Worth, Texas, on June 1, 2021.

D. Cameron Bryan,

Deputy Director, Airports Division.

[FR Doc. 2021–12237 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–0519]

Agency Information Collection

Activities: Requests for Comments; Clearance of New Approval of Information Collection: Information Required To Implement Emergency Grants-In-Aid for Airports Under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 and the American Rescue Plan Act, 2021

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments regarding

FAA's intention to request Office of Management and Budget (OMB) approval for a new information collection. The information will be collected from airport sponsors who request payment under a concessions relief grant. FAA's Office of Airports will use the information to determine whether airport sponsors and airport concessions benefitting from rent relief meet the eligibility and other requirements under CRRSA and ARPA prior to processing a payment of Federal funds.

DATES: Written comments should be submitted by July 12, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Comments received will not be considered before approval of this emergency collection but will be considered in the renewal process.

FOR FURTHER INFORMATION CONTACT:

Julieann Dwyer by email at: Julieann.Dwyer@faa.gov; phone: 202–267–8375.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2121–XXXX.

Title: Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Information Required to Implement Airport Grant Programs under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 and the American Rescue Plan Act, 2021.

Form Numbers: None.

Type of Review: FAA seeks emergency clearance for a new information collection.

Background: FAA intends to seek emergency clearance for a new information to facilitate its implementation of grants under the *Coronavirus Response and Relief Supplemental Appropriations Act*, Public Law 116–260 (Dec. 27, 2020) (CRRSA) and the *American Rescue Plan*

Act, Public Law 117–2 (Mar. 11, 2021) (ARPA) to primary airports to provide relief from rent and minimum annual guarantee (MAG) obligations to eligible airport concessions. This information collection permits FAA to confirm that rent relief is consistent with the requirements of CRRSA and ARPA. If FAA does not receive emergency approval, the economic recovery of the nation's air transport system may be delayed because of the inability of airports to maintain continuity of operations and assure the sustainability of vital concession partners.

CRRSA directed FAA to provide \$200 million in grants to primary airports for the purpose of providing relief from rent and MAG obligations to eligible airport concessions. In addition, ARPA directed FAA to provide \$800 million in grants to primary airports for the purpose of providing relief from rent and MAG obligations to eligible airport concessions. FAA developed a streamlined information collection to confirm that airport sponsors and concessions receiving rent relief met CRRSA and ARPA eligibility and other legal requirements. Specifically, airport sponsors must provide relief on a proportional basis and after December 27, 2020, and March 11, 2021, respectively, as well as conduct prioritized consultation with Airport Concession Disadvantaged Business Enterprises (ACDBEs).

The information will be collected from airport sponsors (public agencies) who request payment under a concessions relief grant. FAA's Office of Airports (ARP) will use the information to determine whether airport sponsors and airport concessions benefitting from rent relief meet the eligibility and other requirements under CRRSA and ARPA prior to processing a payment of Federal funds.

Comments received will not be considered before approval of this emergency collection but will be considered in the renewal process.

Respondents: FAA estimates approximately 404 respondents.

Frequency: Information will be collected one time for each grant program.

Estimated Average Burden per Response: 6 hours.

Estimated Total Annual Burden: Approximately 4,848 hours annually.

Issued in Washington, DC, on June 7, 2021.

Robert A. Hawks,

Deputy Director, Office of Airports Planning and Programming, Federal Aviation Administration.

[FR Doc. 2021–12232 Filed 6–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Numbers FRA–2010–0044, FRA–2010–0049, and FRA–2011–0104]

Railroads' Requests To Amend Their Positive Train Control Safety Plans and Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that three host railroads recently submitted requests for amendments (RFA) to their FRA-approved Positive Train Control Safety Plans (PTCSP). As these RFAs may involve requests for FRA's approval of proposed material modifications to FRA-certified positive train control (PTC) systems, FRA is publishing this notice and inviting public comment on railroads' RFAs to their PTCSPs.

DATES: FRA will consider comments received by June 21, 2021. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to PTC systems.

ADDRESSES:

Comments: Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket numbers for the host railroads that filed RFAs to their PTCSPs are cited above and in the **SUPPLEMENTARY INFORMATION** section of this notice. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports>. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information.

FOR FURTHER INFORMATION CONTACT:

Gabe Neal, Deputy Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: Gabe.Neal@dot.gov.

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with 49 CFR part 236, subpart I, before the technology may be operated in revenue service. Before making

certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under Title 49 Code of Federal Regulations (CFR) Section 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that host railroads' recent RFAs to their PTCSPs are available in their respective public PTC dockets, and this notice provides an opportunity for public comment on these RFAs.

On May 26, 2021, the following three host railroads jointly submitted an RFA to their respective PTCSPs for their Interoperable Electronic Train Management Systems (I-ETMS): Central Florida Rail Corridor (CFRC), North County Transit District (SDNX), and Trinity Railway Express (TRE). Their joint RFA is available in Docket Numbers FRA–2010–0044, FRA–2010–0049, and FRA–2011–0104.

Interested parties are invited to comment on any RFAs to railroads' PTCSPs by submitting written comments or data. During FRA's review of railroads' RFAs, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to PTC systems. See 49 CFR 236.1021; see also 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny railroads' RFAs to their PTCSPs at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See <https://www.regulations.gov/privacy-notice> for the privacy notice of [regulations.gov](https://www.regulations.gov). To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information,

please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,
Director, Office of Railroad Systems and Technology.

[FR Doc. 2021-12294 Filed 6-10-21; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA). The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before November 8, 2021.

FOR FURTHER INFORMATION CONTACT: Micah M. Miller, Regional Counsel, Office of Chief Counsel, (404) 865-5474 or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366-9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project file for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at <https://www.transit.dot.gov>.

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken,

including, but not limited to, NEPA [42 U.S.C. 4321-4375], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], Endangered Species Act [16 U.S.C. 1531], and the Clean Air Act [42 U.S.C. 7401-7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**.

The project and actions that are the subject of this notice follow: *Project name and location:* Proposed Salem Avenue Transit Facility, City of Roanoke, Virginia. *Project Sponsor:* The Greater Roanoke Transit Company (GRTC) known also as "Valley Metro." *Project description:* The project involves the redevelopment of an asphalt parking lot into a GRTC and Greyhound transit facility in downtown Roanoke, Virginia. The facility will have a pickup and drop-off entrance and exit along Salem Avenue, two main canopy waiting areas, a GRTC building, a Greyhound building, and multiple landscaped walkways and cross walks. *Final agency action:* Section 106 determination of no adverse effect concurrence, dated February 09, 2021; Determination of the applicability of a categorical exclusion pursuant to 23 CFR part 771.118(d), dated May 17, 2021. Supporting documentation: Documented Categorical Exclusion checklist and supporting materials, dated May 3, 2021.

Authority: 23 U.S.C. 139(l)(1).

Mark A. Ferroni,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2021-11841 Filed 6-10-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Disclaimer and Consent With Respect to United States Savings Bonds/Notes

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments

concerning the Disclaimer and Consent With Respect To United States Savings Bonds/Notes.

DATES: Written comments should be received on or before August 10, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006-A, P.O. Box 1328, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Disclaimer and Consent With Respect To United States Savings Bonds/Notes.

OMB Number: 1530-0059.

Form Number: FS Form 1849.

Abstract: A disclaimer and consent may be necessary when, as the result of an error in registration or otherwise, the payment, refund of purchase price, or reissue of savings bonds/notes as requested by one person would appear to affect the right, title or interest of some other person.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 450.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 45.

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: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. 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 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 13, 2021.

Bruce A. Sharp,
Bureau PRA Clearance Officer.

[FR Doc. 2021-10474 Filed 6-10-21; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY**Bureau of the Fiscal Service****Proposed Collection of Information:
Special Form of Assignment for U.S.
Registered Securities**

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Special Form of Assignment for U.S. Registered Securities.

DATES: Written comments should be received on or before August 10, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006-A, P.O. Box 1328, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1530-0058.

Form Number: FS Form 1832.

Abstract: The information is requested to complete transactions involving the assignment of U.S. Registered and Bearer Securities.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 45.

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: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity

of the information to be collected; 4. 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 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 13, 2021.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2021-10475 Filed 6-10-21; 8:45 am]

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**DEPARTMENT OF VETERANS
AFFAIRS****Solicitation of Nominations for
Appointment to the Veterans' Family,
Caregiver and Survivor Advisory
Committee**

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the Veterans' Family, Caregiver and Survivor Advisory Committee (hereinafter in this section referred to as "the Committee").

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on June 30, 2021.

ADDRESSES: All nominations should be emailed to the VA Advisory Committee Management Office mailbox at vaadvisorycmte@va.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Betty Moseley Brown, Designated Federal Officer, Veterans Experience Office, Department of Veterans Affairs, 240-291-4700 or at Betty.MoseleyBrown@va.gov.

SUPPLEMENTARY INFORMATION: The Veterans' Family, Caregiver and Survivor Advisory Committee was established to advise the Secretary of VA on issues related to:

(1) Veterans' families, caregivers and survivors across all generations, relationships and Veteran status;

(2) The use of VA care, benefit and memorial services by Veterans' families, caregivers and survivors, and possible adjustments to such care, benefits and memorial services;

(3) Veterans' family, caregiver and survivor experiences and VA policies, regulations and administrative requirements related to the transition of Service members from the Department of Defense (DoD) to enrollment in VA that impact Veterans' families, caregivers and survivors; and

(4) Factors that influence access to, quality of and accountability for care, and benefits for Veterans' families, caregivers and survivors.

Authority: The Committee was established by the directive of the Secretary of VA, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., Appendix 2. The Committee responsibilities include:

(1) Advising the Secretary on how VA can assist and represent Veterans' families, caregivers and survivors, including recommendations regarding expanding services and benefits to Veterans' families, caregivers and survivors who are not currently served by VA, and related policy, administrative, legislative, and/or regulatory actions.

(2) Advising the Secretary on incorporating lessons learned from current, and previous, successful family research and outreach efforts that measure the impact of provided care benefits and memorial services on Veterans' families, caregivers and/or survivors;

(3) Advising the Secretary on collaborating with family support programs within VA and engaging with other VA and non-VA advisory committees focused on specific demographics of Veterans' families, caregivers and survivors;

(4) Advising the Secretary on working with interagency, intergovernmental, private/non-profit, community and faith-based organizations to identify and address gaps in service;

(5) Advising the Secretary on utilizing journey mapping or other means to depict the life experience cycle of families, caregivers and survivors of Veterans to create a more holistic understanding of important life cycle events and their impacts to ensure accountability;

(6) Advising the Secretary on Veterans' family, caregiver and survivors' experiences and VA policies, regulations and administrative requirements related to the transition of Service members from DoD to enrollment in VA;

(7) Advising the Secretary on integrating Veterans' families, caregivers and survivors into key VA initiatives such as access to care, suicide prevention and homelessness; and

(8) Providing such reports as the Committee deems necessary, but not less than one report per year, to the Secretary, through the Chief Veterans Experience Officer, Veterans Experience Office to describe the Committee's activities, deliberations, and findings, which may include but are not limited

to: (1) Identification of current challenges and recommendations for remediation related to access of care and benefit services and of Veterans' families, caregivers, and survivors; and (2) identification of current best practices in care, benefit and memorial service delivery to Veterans' families, caregivers and survivors, and the impact on such best practices.

Membership Criteria and Qualifications: VA is requesting nominations for Committee membership. The Committee is composed of up to 20 members and several ex-officio members. The members of the Committee are appointed by the Secretary of Veteran Affairs from the general public, from various sectors and organizations, including but not limited to:

- (1) Veteran's family members, caregivers and survivors;
- (2) Veteran-focused organizations;
- (3) Military history and academic communities;
- (4) National Association of State Directors of Veterans Affairs;
- (5) The Federal Executive Branch;
- (6) Research experts and service providers; and
- (7) Leaders of key stakeholder associations and organizations.

In accordance with the Committee Charter, the Secretary shall determine the number (up to 20), terms of service,

and pay and allowances of Committee members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Committee member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience information so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission:

Nominations should be typed (one nomination per nominator). Nomination package should include:

- (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity) and a statement from the nominee indicating a willingness to serve as a member of the Committee;
- (2) The nominee's contact information, including name, mailing address, telephone numbers and email address;
- (3) The nominee's curriculum vitae, not to exceed three pages and a one-page cover letter; and

- (4) A summary of the nominee's experience and qualifications relative to the membership consideration described above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive per diem and reimbursement for eligible travel expenses incurred.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: June 8, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

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Part II

Federal Reserve System

12 CFR Part 210

Collection of Checks and Other Items by Federal Reserve Banks and
Funds Transfers Through Fedwire; Proposed Rule

FEDERAL RESERVE SYSTEM**12 CFR Part 210****[Regulation J; Docket No. R–1750]****RIN 7100–AG16****Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire****AGENCY:** Board of Governors of the Federal Reserve System (Board).**ACTION:** Proposed rule, request for comment.

SUMMARY: The Board is proposing amendments to Regulation J to govern funds transfers through the Federal Reserve Banks' (Reserve Banks) new FedNowSM Service by establishing a new subpart C. The Board is also proposing changes and clarifications to subpart B, governing the Fedwire Funds Service, to reflect the fact that the Reserve Banks will be operating a second funds transfer service in addition to the Fedwire Funds Service, as well as proposing technical corrections to subpart A, governing the check service.

DATES: Comments must be submitted by August 10, 2021.**ADDRESSES:** You may submit comments, identified by Docket No. R–1750; RIN 7100–AG16, by any of the following methods:

- *Agency Website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Email:* regs.comments@federalreserve.gov. Include the docket number and RIN in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove sensitive personal information at the commenter's request. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Jess Cheng, Senior Counsel (202) 452–2309, Gavin L. Smith, Senior Counsel (202) 452–3474, Legal Division, or Ian C.B.

Spear, Manager (202) 452–3959, Kirstin E. Wells, Principal Economist (202) 452–2962, Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:**I. Background**

Instant payment services have emerged globally over the past two decades to address the enhanced speed and convenience expected by the public for payment transactions in modern digital economies. Instant payments allow individuals and businesses to send and receive payments at any time of the day, on any day of the year, and to complete those payments within seconds (from the end user perspective) such that the beneficiary has access immediately to final funds, meaning funds they can use at that time. Beyond speed and convenience, instant payments can yield real economic benefits for individuals and businesses by providing them with more flexibility to manage their money and allowing them to make time-sensitive payments whenever needed. In light of these potential benefits, there is broad consensus within the U.S. payment community that, just as real-time services have become standard for other everyday activities, instant payment services have the potential to become widely used, resulting in a significant and positive impact on the U.S. economy.

In 2019, the Board issued a **Federal Register** notice announcing that the Reserve Banks would develop a new interbank 24x7x365 real-time gross settlement service with integrated clearing functionality, called the FedNow Service, to support instant payments in the United States (the 2019 Notice). The Board's determination was based on the public benefits that the service would provide and the Board's assessment that such a service would meet the requirements of the Depository Institutions Deregulation and Monetary Control Act of 1980, as well as the Board's criteria for new or enhanced Federal Reserve payment services.¹ The FedNow Service will operate alongside similar services provided by the private sector to provide core infrastructure supporting instant payments in the United States. In the 2019 Notice, the Board also requested comment on all aspects of the planned service. One proposed aspect was that banks would

be required to make funds associated with individual instant payments available to their end-user customers immediately after receiving notification from the service that an instant payment had settled.

In August 2020, the Board issued a subsequent **Federal Register** notice describing the FedNow Service details (the 2020 Notice), based on additional analysis informed by the comments received in response to the 2019 Notice.² In that notice, the Board approved, among other things, the aspect of immediate funds availability proposed in the 2019 Notice. The Board also indicated that it was assessing applicable laws and regulations, and, to the extent changes to the Board's regulations were needed, including to clarify funds availability, the Board would request public comment.

The Board has completed its assessment with respect to Regulation J and is issuing this request for comment on the regulation incorporating changes to provide a legal framework for the FedNow Service. The Board's proposed amendments to Regulation J establish a new subpart C to govern funds transfers made through the FedNow Service and amend the title of the regulation. The Board is also proposing technical changes and clarifications to subpart B, which governs funds transfers through the Fedwire Funds Service, to reflect the fact that the Reserve Banks will be operating two funds transfer services. The Board is further proposing technical corrections to subpart A of the regulation, which governs the collection of checks and other items by the Reserve Banks.

II. Overview of Proposed Regulation J Amendments

Subpart B of Regulation J currently specifies the rules applicable to funds transfers handled by Reserve Banks over the Fedwire Funds Service. Subpart B would not apply to transfers over the new FedNow Service, which will be a separate funds transfer service operated by the Reserve Banks. The Board is proposing a new subpart C of Regulation J to provide a comprehensive set of rules governing funds transfers over the FedNow Service. As it did for subpart B, the Board proposes to adopt a commentary to subpart C that would constitute a Board interpretation of the regulation.

In general, the proposed new subpart C of Regulation J specifies the terms and conditions under which Reserve Banks

¹ See "Federal Reserve Actions To Support Interbank Settlement of Faster Payments, Request for Comments," 84 FR 39297 (Aug. 9, 2019).

² "Service Details on Federal Reserve Actions To Support Interbank Settlement of Instant Payments," 85 FR 48522 (Aug. 11, 2020).

will process funds transfers over the FedNow Service, as well as grants the Reserve Banks authority to issue an operating circular for the FedNow Service, which would detail more specific terms and conditions governing the FedNow Service consistent with the proposed subpart. Additionally, proposed subpart C's terms of service include a requirement for a FedNow participant that is the beneficiary's bank to make funds available to the beneficiary immediately after it has accepted the payment order over the service. Proposed new subpart C also expands and clarifies the applicability of the Uniform Commercial Code (UCC) Article 4A to all transfers over the FedNow Service, subject to a limited number of modifications and clarifications that are consistent with the purposes of UCC Article 4A.

UCC Article 4A, which has been adopted in all 50 states, provides comprehensive rules governing the rights and responsibilities of the parties to funds transfers. The rights and responsibilities covered in UCC Article 4A include those with respect to the receipt, acceptance or rejection, and execution of a payment order and settlement of a payment obligation; liability for the late, erroneous, or improper execution of funds transfers; the risks of loss associated with an unauthorized payment order; the obligation to pay for and the right to receive payment for a payment order; and the effect of payment by funds transfer on any underlying obligation between an originator and a beneficiary of a funds transfer.

The Board incorporated UCC Article 4A, as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 1989, into Regulation J for purposes of the Fedwire Funds Service and proposes to do the same for the FedNow Service. The Board believes that this incorporation is necessary to ensure that the law applicable to all transfers over the FedNow Service is consistent, predictable, and clear. The Board also proposes to replace the currently incorporated 1989 version of UCC Article 4A with the more recent 2012 version and to set forth those provisions in Appendix A of part 210, rather than in Appendix B of subpart B where they are currently set forth.³

³ UCC Article 4A has been amended once, in 2012. The 2012 amendments, as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, which is now also known as the Uniform Law Commission, were necessary to retain the coverage of non-consumer remittance transfers by UCC Article 4A in light of revisions to the

Other minor changes are also proposed to Regulation J to make clarifying amendments to subpart B and technical corrections in subpart A. The Board does not believe that the proposed amendments to subparts A and B would impose additional operating burdens on any parties.

The Board requests comment on all aspects of the proposed amendment to Regulation J and the specific questions posed below.

III. Section-by-Section Analysis

A. Subparts A and B

The Board is proposing technical corrections in subpart A of Regulation J to update cross-references to other regulations that are no longer current.

Additionally, the Board is proposing amendments to subpart B, governing funds transfers through the Fedwire Funds Service, to reflect the fact that the Reserve Banks will be operating two separate funds transfer systems with the launch of the FedNow Service and distinguish between the two services. For example, the proposed amendments include clarifications to § 210.25(b) with respect to subpart B's scope of application and modifications to the definitions of the following terms: Beneficiary, beneficiary's bank, payment order, receiving bank, and sender. These proposed amendments are intended to clarify that the provisions of subpart B are limited to payment orders and parties to a funds transfer that are sent through the Fedwire Funds Service; payment orders and parties to a funds transfer that are sent through the FedNow Service, for example, would not be governed by subpart B.

Additionally, the proposed amendments to subpart B include changes to update § 210.25(c), which authorizes Reserve Banks to issue operating circulars consistent with the subpart in connection with the Fedwire Funds Service. The proposed revisions explicitly authorize Reserve Banks to issue operating circulars that specify the time and method of receipt, execution, and acceptance of a payment order and

Electronic Fund Transfer Act ("EFTA"), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Those statutory changes brought certain non-consumer remittance-related fund transfers under the scope of the EFTA and thus, absent amendment, would have been explicitly carved out from coverage by UCC Article 4A. Regulation J was also amended in 2012 to similarly clarify that its provisions continue to apply to a Fedwire Funds transfer even if the funds transfer also meets the definition of "remittance transfer" under the EFTA. "Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire: Elimination of "As-of Adjustments" and Other Clarifications," 77 FR 21854 (Apr. 12, 2012).

settlement of a Reserve Bank's payment obligation for purposes of UCC Article 4A; specify service terms governing ancillary features of the Fedwire Funds Service; and provide for the acceptance of documents in electronic form to the extent any provision in UCC Article 4A requires an agreement or other document to be in writing.

The proposed amendments to subpart B further include minor changes to § 210.28(b)(3) to provide that the security interest that a sender grants to a Reserve Bank is with respect to all of the sender's assets in the possession of, as well as in the control of, or held for the account of, the Reserve Bank; additional revisions are proposed to the commentary to that section to clarify its description of relevant UCC Article 4A provisions.

Additionally, the proposed amendments to subpart B include a minor change to § 210.30 to clarify that a sender may not send a payment order to a Reserve Bank that specifies an execution date, nor may it specify a payment date, that is later than the day on which the payment order is issued, unless the Reserve Bank agrees with the sender in writing to follow such instructions.

The proposed amendments to subpart B also include a clarifying revision to § 210.32, which governs the payment of compensation by Reserve Banks in the form of interest. Section 210.32 provides that, when a Reserve Bank is obligated to pay compensation to another party in connection with its handling of a funds transfer under UCC Article 4A, the Reserve Bank shall pay compensation in the form of interest to its sender, its receiving bank, its beneficiary, or another party to the funds transfer that is entitled to such payment. The proposed revisions refer to these payments as "compensation" rather than interest payments. The Board believes this clarification would help remove any confusion that such payment is related to any purpose other than compensation, such as monetary policy transmission.

Finally, the Board is proposing technical revisions in the commentary to subpart B to correct cross-references to UCC Article 1 and to update cross-references to statutes and other regulations that are no longer current.

B. Subpart C—Funds Transfers Through the FedNow Service

The Board is proposing to amend Regulation J to establish a new subpart C governing funds transfers over the FedNow Service. Many of the concepts embodied in the proposed subpart C are similar to those currently in subpart B

of Regulation J. Like the Fedwire Funds Service, the FedNow Service is a real-time gross settlement system and a funds-transfer service under UCC Article 4A. However, a number of the proposed subpart C provisions have been tailored to the nature of the FedNow Service where it differs from that of the Fedwire Funds Service.

In particular, the FedNow Service is designed for the end-to-end transfer to be completed in a matter of seconds, as described in the 2020 Notice. This means that the beneficiary's bank would agree, as provided in proposed subpart C, that it will make funds available to the beneficiary immediately after it has accepted the payment order.

Another difference between the FedNow Service and the Fedwire Funds Service is that the FedNow Service will accommodate participants that choose to settle their activity over the service in the master account of a correspondent bank. In contrast, participants in the Fedwire Funds Service are limited to settling their activity over that service in their own master account. The terms of proposed subpart C reflect the fact that FedNow Service will support this additional mechanism for settling obligations that arise between Reserve Banks and FedNow participants.

Further, unlike the Fedwire Funds Service, which is designed to serve primarily as a large-value funds transfer system between institutional users, the FedNow Service is designed to also accommodate consumer use. Therefore, in the event that a transfer over the FedNow Service meets the definition of "electronic fund transfer" under the Electronic Fund Transfer Act (EFTA), proposed subpart C provides that it would apply to the transfer but the EFTA would prevail to the extent of any inconsistency, as discussed further later.

Section 210.40 Authority, Purpose, and Scope

This proposed section summarizes the Board's authority to adopt this regulation and provides a description of how the subpart is organized. Similar to the rules governing the Fedwire Funds Service in subpart B, new subpart C would incorporate those provisions of UCC Article 4A (as set forth in an appendix to Regulation J) into subpart C that are not inconsistent with the provisions set forth expressly in subpart C.

Specifically, proposed subpart C provides that UCC Article 4A applies to all funds transfers over the FedNow Service, including a transfer from a consumer originator or a transfer to a consumer beneficiary that is carried out through the FedNow Service. Such a

consumer transaction could potentially be subject to the EFTA. By its terms, UCC Article 4A would not apply to a funds transfer any part of which is governed by the EFTA. Therefore, absent this proposed section in subpart C, a number of important legal aspects with respect to these consumer transfers over the FedNow Service could potentially lack clear and consistent rules.

This proposed section provides that all transfers over the FedNow Service, including those transfers any portion of which is governed by the EFTA, are covered by subpart C (which incorporates UCC Article 4A by reference); however, in the event of an inconsistency between the provisions of subpart C and the EFTA, the proposed section provides that the EFTA would prevail to the extent of the inconsistency. The commentary accompanying this proposed provision in subpart C provides an illustrative example. The Board believes this proposed provision is necessary in order to provide a clear, consistent, and comprehensive set of rules for all funds transfers over the FedNow Service, consistent with the EFTA and the purposes of UCC Article 4A.

This proposed section also specifies the parties subject to proposed subpart C with respect to the FedNow Service. These parties would include senders that send payment orders to a Reserve Bank over the service, receiving banks that receive payment orders from a Reserve Bank over the service, beneficiaries that receive payment for payment orders by means of a credit to their settlement account with a Reserve Bank, and Reserve Banks that send or receive payment orders over the FedNow Service.

For example, suppose that Payor has an account with Bank A and instructs Bank A to pay \$1,000 to Payee's account at Bank B, and Bank A carries out Payor's instruction using the FedNow Service.⁴ Suppose further that Bank A and Bank B maintain accounts on the books of different Reserve Banks. In this example, the Reserve Bank of Bank A and the Reserve Bank of Bank B would be intermediary banks; Bank A would be the sender with respect to the payment order that it sends to its Reserve Bank; Bank B would be the receiving bank with respect to the payment order that it receives from its Reserve Bank.

⁴ This example is only for illustrative purposes. Aspects of the arrangement would be different, for example, if either of the banks were to use an agent, service provider, or correspondent bank.

In this example, the Reserve Banks of Bank A and Bank B would be subject to proposed subpart C, because they are Reserve Banks sending or receiving payment orders over the FedNow Service. It is possible that a Reserve Bank may also be subject to subpart C in its capacity as a beneficiary's bank with respect to a payment order (e.g., interbank credit transfers between FedNow participants). For other capacities, however, a Reserve Bank would not be a party to the funds transfer for purposes of proposed subpart C and UCC Article 4A. For example, if a sender settles its activity over the FedNow Service in the account of a correspondent bank, the sender's Reserve Bank would be an intermediary bank in the funds transfer chain, but the Reserve Bank of the correspondent bank would not be a sender or receiving bank with respect to the payment order and would not be a party to the funds transfer.

Under the proposed section, subpart C would also apply to any party to a funds transfer sent through the FedNow Service that is in privity (*i.e.*, has a contractual relationship) with a Reserve Bank in the funds transfer chain. Other parties to a funds transfer sent through the FedNow Service (*i.e.*, a party not in privity with a Reserve Bank, such as Payor and Payee in the example above) would be covered by this proposed subpart only under certain circumstances. If these remote parties have notice that the FedNow Service might be used for their funds transfer and that subpart C is the governing law with respect to the transfer over the FedNow Service, then proposed subpart C would govern their rights and obligations with respect to the FedNow Service. However, it is possible for that remote party to expressly select by agreement a governing law other than subpart C with respect to its rights and obligations in connection with that transfer. For example, Payor and Bank A in the example above could make an agreement selecting the law of a particular jurisdiction, and not subpart C, to govern rights and obligations between each other. In that event, the law of that jurisdiction would govern those rights and obligations, and not subpart C, even if the remote party (Payor) had notice that the FedNow Service may be used and that subpart C is the governing law with respect to the transfer over the FedNow Service.

Finally, this proposed section authorizes Reserve Banks to issue operating circulars which would detail more specific terms and conditions governing the FedNow Service consistent with the proposed subpart.

Similar to the rules governing the Fedwire Funds Service in subpart B and the proposed clarifying edits to subpart B, new subpart C would authorize the Reserve Banks to issue operating circulars with respect to the FedNow Service that may set cut-off hours and funds-transfer business days; address security procedures offered by the Reserve Banks to verify the authenticity of a payment order; specify format and media requirements for payment orders; identify messages that are not payment orders; specify the time and method of receipt, execution, and acceptance of a payment order and settlement of a Reserve Bank's payment obligation for purposes of UCC Article 4A; specify service terms governing ancillary features of the FedNow Service; provide for the acceptance of documents in electronic form to the extent any provision in UCC Article 4A requires an agreement or other document to be in writing; and impose charges for funds transfer services.

Reflecting aspects where the FedNow Service differs from the Fedwire Funds Service, the proposed section further provides that Reserve Bank operating circulars governing the FedNow Service may also prescribe time limits for the processing of payment orders.

Section 210.41 Definitions

This proposed section defines the terms used in the regulation. Similar to subpart B, proposed subpart C generally incorporates the definitions set forth in UCC Article 4A (e.g., beneficiary, intermediary bank, receiving bank, and security procedure), in some instances with modifications. Specifically, the proposed subpart modifies the definitions of five UCC Article 4A terms: Beneficiary, beneficiary's bank, payment order, receiving bank, and sender. In general, these modifications are intended to clarify that, for the purposes of subpart C, these terms would be limited to payment orders and parties in a funds transfer that are sent through the FedNow Service. Parties to a funds transfer that is sent through the Fedwire Funds Service, for example, would not be a "beneficiary," "beneficiary's bank," "receiving bank," or "sender" as those terms are defined in proposed subpart C.

This proposed section also includes definitions of other terms not defined in UCC Article 4A, including "sender's settlement account," "receiving bank's settlement account," and "beneficiary's settlement account." These terms reflect the fact that a FedNow participant may settle its activity over the FedNow Service in either its master account with a Reserve Bank or, alternatively, the

master account of a correspondent bank with a Reserve Bank. Whether it is its own master account or that of a correspondent, a FedNow participant would need to designate a settlement account on the books of a Reserve Bank that the Reserve Banks may use to settle the participant's activity over the FedNow Service.

This proposed section also includes a definition of the term "Federal Reserve Bank" with respect to an entity, which is not a term defined in UCC Article 4A. In instances where a FedNow participant maintains an account with a Reserve Bank, this proposed section takes an approach similar to the rules governing the Fedwire Funds Service in subpart B. In those instances, the term "Federal Reserve Bank" with respect to the FedNow participant means the Reserve Bank at which the participant maintains an account. To reflect the fact that the FedNow Service will also accommodate participants that choose to settle their activity over the service in the master account of a correspondent bank, the proposed definition also addresses instances where a FedNow participant does not maintain a master account with a Reserve Bank. In those instances, the term "Federal Reserve Bank" with respect to that participant means the Reserve Bank in whose District the participant is located, as determined under the procedure described in Part 204 of this chapter (Regulation D), even if the participant is not otherwise subject to that section. As noted above, the Reserve Bank of the participant would be a party to the funds transfer, but the Reserve Bank of its correspondent bank would not be a party to the funds transfer.

Section 210.42 Reliance on Identifying Number

This proposed section provides that a Reserve Bank may rely on the number in the payment order identifying the beneficiary's bank or the beneficiary, consistent with UCC Article 4A. As a practical matter, reliance on identifying numbers enables banks to more efficiently process payment orders by automated means. Rather than manual processing of payment orders with human reading of the contents of the order, banks typically use machines to read orders that, using a standard format, identify the beneficiary's bank by routing number or the beneficiary by the number of a bank account, or by other identifying number. This standard format might also allow for the inclusion of additional information in the payment order (e.g., the name of the beneficiary's bank or the beneficiary) that can be useful for reference, even if

not relied upon to process the payment order.

If a payment order contains both the identifying number and the name of the beneficiary's bank or beneficiary supplied by the originator of the funds transfer, it might be possible for a receiving bank processing the order to detect an inconsistency and determine that the name and number do not refer to the same party. UCC Article 4A provides that a bank is under no duty to make such a determination that the identifying number and name refer to the same party in processing the payment order. If such a duty were imposed, the benefits of automated payments would be significantly lost; these benefits include the substantial economies of operation and the reduction in the possibility of clerical error. Rather, UCC Article 4A allows receiving banks to act on the basis of the identifying number, without regard to name provided in the payment order, so long as the bank does not know the name and number refer to different parties.

Consistent with UCC Article 4A, proposed § 210.42 provides that a Reserve Bank, as receiving bank, may rely on the routing number of the beneficiary's bank specified in a payment order as identifying the appropriate beneficiary's bank, even if the payment order identifies another bank by name, provided that the Reserve Bank does not know of the inconsistency. Similarly, a Reserve Bank, where it acts as the beneficiary's bank, may rely on the number identifying a beneficiary, such as the beneficiary's account number, specified in a payment order as identifying the appropriate beneficiary, even if the payment order identifies another beneficiary by name, provided that the Reserve Bank does not know of the inconsistency.

The proposed section also serves to provide notice to nonbank senders that send payment orders directly to a Reserve Bank through the FedNow Service that the Reserve Bank may rely on the numbers in the payment orders identifying the beneficiary's bank and the beneficiary.

Section 210.43 Agreement of Sender

Proposed § 210.43 describes when an obligation to pay arises for FedNow participants that send a payment order over the FedNow Service and how that obligation is discharged. Under that proposed section, when a sender sends a payment order to a Reserve Bank over the FedNow Service and the Reserve Bank accepts the payment order, the sender has an obligation to pay the

Reserve Bank for the amount of the payment order. This proposed section further specifies that the obligation of the sender is paid by a debit to the settlement account of the sender. This approach is generally similar to that taken by subpart B for the Fedwire Funds Service, but it has been adjusted to reflect the fact that the FedNow Service will accommodate participants that choose to settle their activity over the service in the master account of a correspondent bank. The proposed section, therefore, provides that the sender authorizes its Reserve Bank to obtain payment for a payment order by debiting, or causing another Reserve Bank (*i.e.*, the Reserve Bank of the correspondent bank, if one is used) to debit, the amount of the payment order from the settlement account.

In addition, this proposed section includes provisions addressing overdrafts, taking an approach similar to that of subpart B, with adjustments to reflect the fact that the participant activity over the FedNow Service will settle in settlement accounts designated by the FedNow participant. The proposed section establishes that a sender does not have a right to an overdraft in its settlement account and sets out the sender's obligations to ensure there are sufficient funds in its settlement account and to cover any overdraft by the time the overdraft becomes due and payable. This section also provides a Reserve Bank with a security interest in the sender's assets held at any Reserve Bank to secure any obligation owed and also specifies the actions a Reserve Bank may take to recover the amount of an overdraft, including set-off and realization of collateral. Finally, this proposed section clarifies that settlement accounts could be subject to overdraft charges, where applicable.

Section 210.44 Agreement of Receiving Bank

With respect to FedNow participants that receive payment orders over the service and accept the order, § 210.44 specifies how the participant receives payment. The proposed section provides that for payment orders that a receiving bank receives from a Reserve Bank over the FedNow Service, payment for the order is made by credit to the settlement account of the receiving bank. This approach is generally similar to that taken by the rules governing the Fedwire Funds Service in subpart B, with adjustments to reflect the fact that the FedNow Service will accommodate settlement in a participant's own master account or, if the participant chooses, the master

account of a correspondent bank. Specifically, the proposed section provides that the receiving bank authorizes its Reserve Bank to pay for the payment order by crediting, or causing another Reserve Bank (*i.e.*, the Reserve Bank of the correspondent bank, if one is used), to credit the amount of the payment order to the settlement account.

The proposed section also includes a requirement for a FedNow participant that is the beneficiary's bank to make funds available to the beneficiary immediately after its acceptance of the payment order over the service. As noted above, this requirement reflects the fact that an end-to-end transfer over the FedNow Service is intended to be completed in a matter of seconds. Under the proposed section, if a FedNow participant accepts a payment order over the service, it must pay the beneficiary by crediting the beneficiary's account, and it must do so immediately after its acceptance of the payment order. The Board specifically requests comment on whether the regulation should set out specific time parameters to clarify the meaning of "immediately" as used in this funds availability requirement and, if so, whether a timeframe of within seconds or, alternatively, within one minute after the bank has accepted the payment order would be reasonable.

Relatedly, the proposed section states that the rights and obligations with respect to the availability of funds are also governed by the Expedited Funds Availability Act (EFAA) and its implementing regulation, Regulation CC. Regulation CC provides that funds received by a bank by an electronic payment shall be available for withdrawal not later than the business day after the banking day on which such funds are received. The proposed new subpart C would require funds to be made available on a more prompt basis than the availability requirements of the EFAA and Regulation CC. Proposed § 210.44 therefore clarifies that the EFAA and Regulation CC requirements continue to apply independently of subpart C. The proposed commentary provides an example where a beneficiary's bank has failed to satisfy the immediate funds availability requirement under proposed subpart C, even if it has satisfied its obligations under Regulation CC.

The proposed section also clarifies that the obligation for the beneficiary's bank to provide immediate funds availability to the beneficiary does not affect any liability of the beneficiary's bank to the beneficiary, or any party other than a Reserve Bank, under UCC

Article 4A or other law. The Board believes that the bank-customer relationship should be governed by existing law, rather than the funds availability timing requirement that would apply to a FedNow participant as a term of the service. The proposed commentary explains that the timing requirement in this section does not create any new rights that the beneficiary may assert against the beneficiary's bank or otherwise alter any rights of the beneficiary under UCC Article 4A or other applicable law.

Finally, the proposed section addresses certain circumstances in which a FedNow participant that is the beneficiary's bank requires additional time to determine whether to accept the payment order because it has reasonable cause to believe that the beneficiary is not entitled or permitted to receive payment. In those circumstances, if the FedNow participant notifies its Reserve Bank that it requires additional time, the FedNow participant would not be deemed to have accepted the payment order at such time as would otherwise be considered acceptance of the payment under proposed subpart C (*i.e.*, when it receives payment from its Reserve Bank). The proposed commentary provides an example of when this provision might apply: When the beneficiary's bank has reasonable cause to believe that making funds available to the beneficiary may violate applicable U.S. sanctions. The Board specifically requests comment on whether this proposed section is sufficient to cover the likely range of circumstances where a FedNow participant may need additional time to determine whether to accept a payment order.

Section 210.45 Payment Orders

This proposed section sets forth the terms under which a Reserve Bank will accept payment orders from a sender over the FedNow Service. Similar to the rules governing the Fedwire Funds Service in subpart B, this proposed section provides that a sender must make arrangements with its Reserve Bank before it may send payment orders over the FedNow Service.

Also similar to subpart B, this proposed section provides that a Reserve Bank may reject any payment order or impose conditions on the acceptance of payment orders over the FedNow Service for any reason. The proposed commentary provides examples of when rejections might occur with respect to insufficient funds in the sender's settlement account and the lack of a required agreement concerning security procedures, which

mirror the commentary examples in subpart B. The proposed commentary also includes a further example of when a rejection may occur: When a payment order is not successfully processed within time limits established by the Reserve Banks, which reflects the fact that the FedNow Service is designed for the end-to-end transfer to be completed in a matter of seconds.

This proposed section also provides terms with respect to the selection of an intermediary bank for a transfer over the FedNow Service. It takes a similar approach to that of subpart B with respect to the Fedwire Funds Service, with adjustments to reflect that the fact that for the FedNow Service, the Reserve Banks will be the only intermediary banks in the funds transfer chain. Reflecting this transaction structure for transfers over the FedNow Service, the proposed section provides that a FedNow participant may not send a payment order to a Reserve Bank that requires the Reserve Bank to issue a payment order to an intermediary bank other than another Reserve Bank. This proposed section also provides that a sender may not send a value-dated payment order through the FedNow Service, unless the Reserve Bank agrees with the sender in writing to follow such instructions.

Section 210.46 Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary

This proposed section addresses the timing of when a Reserve Bank makes payment to a receiving bank (when the Reserve Bank is an intermediary bank) or beneficiary (when the Reserve Bank is the beneficiary's bank). It adopts a similar approach as that taken by subpart B for the Fedwire Funds Service, but it has been adjusted to reflect the fact that the FedNow Service will also accommodate participants that choose to settle their activity over the service in the master account of a correspondent bank. The proposed section, therefore, provides that payment to a FedNow participant by Reserve Banks is final at the earlier of the time when the amount of the payment order is credited to the FedNow participant's settlement account (which may be the participant's own master account or the master account of its correspondent bank), or the time when the Reserve Bank sends to the FedNow participant either a conforming payment order or, in instances where the FedNow participant is the beneficiary, a notice of the credit.

This payment would be final and irrevocable when made.⁵

Section 210.47 Federal Reserve Bank Liability; Payment of Compensation

This proposed section addresses liability of the Reserve Banks, similar to the rules governing the Fedwire Funds Service in subpart B. It provides that, in connection with its handling of a payment order, a Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Reserve Bank for consequential damages resulting from the Reserve Bank's failure to execute a payment order. This proposed section is consistent with the presumption in UCC Article 4A, under which damages for a receiving bank's failure to execute a payment order that it was obligated to execute by express agreement do not include consequential damages, unless they are provided for in an express written agreement of the receiving bank. This proposed section is not intended to affect the liability of parties more broadly. For example, it is not intended to affect the ability of parties to a funds transfer other than a Reserve Bank to agree to be liable for consequential damages.

Finally, this proposed section provides that where a Reserve Bank is obligated under UCC Article 4A to provide compensation in the form of interest to another party in connection with its handling of a funds transfer over the FedNow Service, the Reserve Bank may do so. In such cases where a Reserve Bank provides compensation in the form of interest, interest would be calculated in accordance with Article 4A. This proposed section adopts rules similar to the rules governing the Fedwire Funds Service in subpart B, with the proposed clarifying amendments to subpart B described above.

IV. Request for Comment

The Board requests comment on all aspects of the proposed amendments to Regulation J. The Board also requests comment on the following specific questions:

1. The proposed regulation requires a FedNow participant that is a beneficiary's bank to make funds available to the beneficiary immediately after it has accepted the payment order over the FedNow Service.

a. Should the Board set out specific time parameters to clarify the meaning of "immediately" as used in this funds

⁵ This does not prevent FedNow participants from implementing procedures to resolve erroneous payments, or impede the ability of the receiving bank to initiate a new transfer to return funds in certain circumstances.

availability requirement? Why or why not?

b. What would be the benefits and drawbacks of specifying that "immediately" as used in this requirement means that the beneficiary's bank must make funds available to the beneficiary within seconds or, alternatively, within one minute after it has accepted the payment order over the FedNow Service?⁶ Or, is there another way for the Board to specify the funds availability timeframe that is consistent with improving the speed of the end-to-end process for an instant payment service and continues to align with prevailing market practices over time?

2. The proposed regulation accommodates a feature of the FedNow Service under which a FedNow participant that is the beneficiary's bank may notify its Reserve Bank that it requires additional time to determine whether to accept the payment order over the FedNow Service because it has reasonable cause to believe that the beneficiary is not entitled or permitted to receive payment. Are there other circumstances where a beneficiary's bank should have additional time to determine whether to accept a payment order? If so, what are those circumstances?

V. Competitive Impact Analysis

The Board conducts a competitive impact analysis when it considers an operational or legal change, if that change would have a direct and material adverse effect on the ability of other service providers to compete with the Federal Reserve in providing similar services due to legal differences or due to the Federal Reserve's dominant market position deriving from such legal differences. All operational or legal changes having a substantial effect on payments-system participants will be subject to a competitive-impact analysis, even if competitive effects are not apparent on the face of the proposal. If such legal differences exist, the Board will assess whether the same objectives could be achieved by a modified

⁶ As a point of comparison, under the Faster Payments Effectiveness Criteria adopted by the Faster Payments Task Force in 2015, a payment solution would be considered "very effective" in satisfying the criterion of fast availability of good funds to the payee if funds are available to the payee within one minute from payment initiation. The Faster Payments Task Force was a broad and inclusive group of payment industry stakeholders convened by the Federal Reserve to collaboratively identify and evaluate alternative approaches to implementing safe, ubiquitous, faster payments capabilities in the United States. The Faster Payments Effectiveness Criteria is available at <https://fedpaymentsimprovement.org/wp-content/uploads/fptf-payment-criteria.pdf>.

proposal with lesser competitive impact or, if not, whether the benefits of the proposal (such as contributing to payments-system efficiency or integrity or other Board objectives) outweigh the materially adverse effect on competition.⁷

The Board does not believe that the proposed amendments to Regulation J will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services due to legal differences. The proposed rule incorporates UCC Article 4A, with revisions to reflect the nature of funds transfers over the FedNow Service and consistent with the purposes of UCC Article 4A. The proposed amendments do not govern similar services provided by private-sector providers. The proposed amendments also do not include provisions that a private-sector provider of similar services could not also adopt to similar effect through rules or operating procedures. Therefore, the Board does not believe that the proposed amendments would affect the competitive position of private-sector providers vis-à-vis the Reserve Banks.

VI. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by the OMB and determined that it contains no collections of information under the PRA.⁸ Accordingly, there is no paperwork burden associated with the proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (the “RFA”) (5 U.S.C. 601 *et seq.*) requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. In this case, the proposed rule would apply to all depository institutions that choose to use the Reserve Bank’s FedNow Service, but the Board does not

believe it will have a significant economic impact on a substantial number of small entities. Nevertheless, this Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 in order for the Board to solicit comment on the effect of the proposal on small entities. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rule

While the Reserve Banks can prescribe by agreement terms and conditions in providing the FedNow Service, the Board believes it is appropriate to bring the FedNow Service within the coverage of Regulation J. As discussed in previous sections, the main objective of the proposed amendments to Regulation J is to establish a new subpart C to govern funds transfers made through the FedNow Service.

2. Small Entities Affected by the Proposed Rule

The proposed amendments would apply to all depository institutions that choose to participate in the FedNow Service regardless of their size. Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a “small banking organization” includes a depository institution with \$550 million or less in total assets. Based on call report data, there are approximately 9,460 depository institutions that have total domestic assets of \$550 million or less and thus are considered small entities for purposes of the RFA.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Other than noted here, there are no new projected reporting, recordkeeping, or other compliance requirements and no substantive changes to existing reporting, recordkeeping or other compliance requirements in the proposed amendments to Regulation J. Depository institutions that voluntarily choose to use the FedNow Service will have to comply with the applicable provisions of this proposed rule, which include the requirement on the availability of funds.

4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board has not identified any likely duplication and/or potential conflict between the proposed

regulatory amendments and any other Federal rule. While some overlap exists between the proposed amendments and EFSA (implemented in Regulation CC), as discussed above, the regulatory overlap does not create conflicting federal rules. Regulation CC’s availability requirements apply to all electronic payments and establish the outer bound of when those funds must be made available. The proposed requirements in Regulation J regarding availability establish a shorter time period for when funds must be made available than is required under Regulation CC and applies only to the subset of electronic payments that use the FedNow Service as a term of the service.

5. Significant Alternatives to the Proposed Rule

As discussed above, the Board has not identified any new or substantial change to regulatory burden associated with the proposed amendments to Regulation J, and the Board has not identified any significant alternatives that would otherwise reduce the regulatory burden on small entities.

C. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language and whether any part of the proposed rule could be more clearly stated.

List of Subjects in 12 CFR Part 210

Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 210 as follows:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH THE FEDWIRE FUNDS SERVICE AND THE FEDNOW SERVICE (REGULATION J)

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 12 U.S.C. 248(i), (j), and 248–1, 342, 360, 464, 4001–4010, and 5001–5018.

■ 2. Revise the heading to part 210 as shown above.

■ 3. Revise § 210.2 to read as follows:

⁷ Federal Reserve Regulatory Service, 7–145.2.

⁸ See 44 U.S.C. 3502(3).

§ 210.2 Definitions.

As used in this subpart A, unless the context otherwise requires:

Account means an account on the books of a Federal Reserve Bank. A subaccount is an informational record of a subset of transactions that affect an account and is not a separate account.

Actually and finally collected funds means cash or any other form of payment that is, or has become, final and irrevocable.

Administrative Reserve Bank with respect to an entity means the Reserve Bank in whose District the entity is located, as determined under the procedure described in § 204.3(g) of this chapter (Regulation D), even if the entity is not otherwise subject to that section.

Bank means any person engaged in the business of banking. A branch or separate office of a bank is a separate bank to the extent provided in the Uniform Commercial Code.

Bank draft means a check drawn by one bank on another bank.

Banking day means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

Cash item means—

(1) A check other than one classified as a noncash item under this section; or

(2) Any other item payable on demand and collectible at par that the Reserve Bank that receives the item is willing to accept as a cash item. *Cash item* does not include a returned check.

Check means a check or an electronic check, as those terms are defined in § 229.2 of this chapter (Regulation CC).

Clock hour and *clock half-hour*. (1) Clock hour means a time that is on the hour, such as 1:00, 2:00, etc.

(2) Clock half-hour means a time that is on the half-hour, such as 1:30, 2:30, etc.

Fedwire Funds Service and *Fedwire* have the same meaning as that set forth in § 210.26.

Item. (1) Means—

(i) An instrument or a promise or order to pay money, whether negotiable or not, that is—

(A) Payable in a Federal Reserve District¹ (District);

(B) Sent by a sender to a Reserve Bank for handling under this subpart; and

(C) Collectible in funds acceptable to the Reserve Bank of the District in which the instrument is payable; or

(ii) A check.

(2) Unless otherwise indicated, *item* includes both a cash and a noncash

item, and includes a returned check sent by a paying or returning bank. *Item* does not include a check that cannot be collected at par, or a payment order as defined in § 210.26(i) and handled under subpart B of this part. The term also does not include an electronically-created item as defined in § 229.2 of this chapter (Regulation CC).

Nonbank payor means a payor of an item, other than a bank.

Noncash item means an item that a receiving Reserve Bank classifies in its operating circulars as requiring special handling. The term also means an item normally received as a cash item if a Reserve Bank decides that special conditions require that it handle the item as a noncash item.

Paying bank means—

(1) The bank by which an item is payable unless the item is payable or collectible at or through another bank and is sent to the other bank for payment or collection;

(2) The bank at or through which an item is payable or collectible and to which it sent for payment or collection; or

(3) The bank whose routing number appears on a check in the MICR line or in fractional form (or in the MICR-line information that accompanies an electronic item) and to which the check is sent for payment or collection.

Returned check means a cash item returned by a paying bank, including an electronic returned check as defined in § 229.2 of this chapter (Regulation CC) and a notice of nonpayment in lieu of a returned check, whether or not a Reserve Bank handled the check for collection.

Sender means any of the following entities that sends an item to a Reserve Bank for forward collection—

(1) A depository institution, as defined in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b));

(2) A member bank, as defined in section 1 of the Federal Reserve Act (12 U.S.C. 221);

(3) A clearing institution, defined as—

(i) An institution that is not a depository institution but that maintains with a Reserve Bank the balance referred to in the first paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342); or

(ii) An Edge corporation or agreement corporation that maintains an account with a Reserve Bank in conformity with Part 211 of this chapter (Regulation K);

(4) Another Reserve Bank;

(5) An international organization for which a Reserve Bank is empowered to act as depository or fiscal agent and maintains an account;

(6) A foreign correspondent, defined as any of the following entities for

which a Reserve Bank maintains an account: A foreign bank or banker, a foreign state as defined in section 25(b) of the Federal Reserve Act (12 U.S.C. 632), or a foreign correspondent or agency referred to in section 14(e) of that act (12 U.S.C. 358); or

(7) A branch or agency of a foreign bank maintaining reserves under section 7 of the International Banking Act of 1978 (12 U.S.C. 347d, 3105).

State means a State of the United States, the District of Columbia, Puerto Rico, or a territory, possession, or dependency of the United States.

Uniform Commercial Code and *U.C.C.* mean the Uniform Commercial Code as adopted in a state

Terms not defined in this section.

Unless the context otherwise requires—

(1) The terms not defined herein have the meanings set forth in § 229.2 of this chapter applicable to subpart C or D of part 229 of this chapter (Regulation CC), as appropriate; and

(2) The terms not defined herein or in § 229.2 of this chapter have the meanings set forth in the Uniform Commercial Code.

■ 4. Amend subpart B of part 210 by:

■ a. Revising the heading to subpart B of part 210 to read as follows:

Subpart B—Funds Transfers Through the Fedwire Funds Service

■ b. Removing the words “Appendix B of this subpart” and “Appendix B to this subpart” and replace with the words “Appendix A of this part 210” wherever they appear.

■ 5. In § 210.25, revise paragraphs (b)(2) and (c) to read as follows:

§ 210.25 Authority, purpose, and scope.

* * * * *

(b) * * *

(2) Except as otherwise provided in paragraphs (b)(3) and (4) of this section, this subpart, including Article 4A as set forth in appendix A of this part and operating circulars of the Federal Reserve Banks issued in accordance with paragraph (c) of this section, governs the rights and obligations of the following parties with respect to the Fedwire Funds Service:

(i) Federal Reserve Banks that send or receive payment orders;

(ii) Senders that send payment orders directly to a Federal Reserve Bank;

(iii) Receiving banks that receive payment orders directly from a Federal Reserve Bank;

(iv) Beneficiaries that receive payment for payment orders by means of credit to an account maintained or used at a Federal Reserve Bank; and

(v) Other parties to a funds transfer any part of which is carried out through

¹ For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam, American Samoa, and the Northern Mariana Islands in the Twelfth District.

the Fedwire Funds Service to the same extent as if this subpart were considered a funds-transfer system rule under Article 4A.

* * * * *

(c) *Operating Circulars*. Each Federal Reserve Bank shall issue an Operating Circular consistent with this subpart that governs the details of its funds-transfer operations in connection with the Fedwire Funds Service and other matters it deems appropriate. Among other things, the Operating Circular may set cut-off times and funds-transfer business days; address security procedures offered by the Federal Reserve Banks to verify the authenticity of a payment order; specify format and media requirements for payment orders; specify the time and method of receipt, execution, and acceptance of a payment order and settlement of a Federal Reserve Bank's payment obligation for purposes of Article 4A; specify service terms governing ancillary features of the Fedwire Funds Service; provide for the acceptance of documents in electronic form to the extent any provision in Article 4A requires an agreement or other document to be in writing; identify messages that are not payment orders; and impose charges for funds-transfer services.

* * * * *

■ 6. Revise § 210.26 to read as follows:

§ 210.26 Definitions.

As used in this subpart, the following definitions apply:

Article 4A means Article 4A of the Uniform Commercial Code as set forth in appendix A of this part, which is incorporated into this subpart in accordance with § 210.25(b).

Automated clearing house transfer means any transfer designated as an automated clearing house transfer in an operating circular issued by the Federal Reserve Banks.

Beneficiary has the same meaning as in Article 4A except that the term is limited to a beneficiary in a funds transfer any portion of which is sent through the Fedwire Funds Service.

Beneficiary's bank has the same meaning as in Article 4A, except that:

(1) The term is limited to a beneficiary's bank in a funds transfer any portion of which is sent through the Fedwire Funds Service;

(2) A Federal Reserve Bank need not be identified in the payment order in order to be the beneficiary's bank; and

(3) The term includes a Federal Reserve Bank when that Federal Reserve Bank is the beneficiary of a payment order.

Fedwire Funds Service means the funds-transfer system owned and

operated by the Federal Reserve Banks that is used primarily for the transmission and settlement of payment orders governed by this subpart. The Fedwire Funds Service does not include the FedNow Service or the system for making automated clearing house transfers.

Interdistrict transfer means a funds transfer involving entries to accounts maintained at two Federal Reserve Banks.

Intradistrict transfer means a funds transfer involving entries to accounts maintained at one Federal Reserve Bank.

Off-line bank means a bank that sends payment orders to and receives payment orders from a Federal Reserve Bank by telephone orally or by other means other than electronic data transmission.

Payment order has the same meaning as in Article 4A except that the term includes only instructions sent or received through the Fedwire Funds Service and does not include automated clearing house transfers or any communication designated in an operating circular issued by a Federal Reserve Bank under this subpart as not being a payment order.

Receiving bank has the same meaning as in Article 4A except that the term is limited to a receiving bank in a funds transfer any portion of which is sent through the Fedwire Funds Service.

Sender has the same meaning as in Article 4A except that the term is limited to a sender in a funds transfer any portion of which is sent through the Fedwire Funds Service.

Sender's account, *receiving bank's account*, and *beneficiary's account* mean the reserve, clearing, or other funds deposit account at a Federal Reserve Bank maintained or used by the sender, receiving bank, or beneficiary, respectively.

Sender's Federal Reserve Bank and *receiving bank's Federal Reserve Bank* mean the Federal Reserve Bank at which the sender or receiving bank, respectively, maintains or uses an account.

■ 7. In § 210.28, revise paragraphs (b)(1) through (3) to read as follows:

§ 210.28 Agreement of sender.

* * * * *

(b) *Overdrafts*. (1) A sender does not have the right to an overdraft in the sender's account. In the event an overdraft is created, the overdraft shall be due and payable immediately, without the need for a demand by the Federal Reserve Bank, at the earliest of the following times:

(i) At the end of the Fedwire Funds Service funds-transfer business day;

(ii) At the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender; or

(iii) At the time the sender suspends payments or is closed.

(2) The sender shall have in its account, at the time the overdraft is due and payable, a balance of actually and finally collected funds sufficient to cover the aggregate amount of all its obligations to the Federal Reserve Bank, whether the obligations result from the execution of a payment order or otherwise.

(3) To secure any overdraft, as well as any other obligation due or to become due to its Federal Reserve Bank, each sender, by sending a payment order to a Federal Reserve Bank that is accepted by the Federal Reserve Bank, grants to the Federal Reserve Bank a security interest in all of the sender's assets in the possession or control of, or held for the account of, the Federal Reserve Bank. The security interest attaches when an overdraft, or any other obligation to the Federal Reserve Bank, becomes due and payable.

* * * * *

■ 8. In § 210.30, revise paragraphs (b) and (c) to read as follows:

§ 210.30 Payment orders.

* * * * *

(b) *Selection of an intermediary bank*. For an interdistrict transfer through the Fedwire Funds Service, a Federal Reserve Bank is authorized and directed to execute a payment order through another Federal Reserve Bank. A sender shall not send a payment order to a Federal Reserve Bank that requires the Federal Reserve Bank to send a payment order to an intermediary bank (other than a Federal Reserve Bank) unless that intermediary bank is designated in the sender's payment order. A sender shall not send to a Federal Reserve Bank a payment order through the Fedwire Funds Service that instructs use by a Federal Reserve Bank of a funds-transfer system or means of transmission other than the Fedwire Funds Service unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

(c) *Execution date and payment date*. A sender shall not send a payment order through the Fedwire Funds Service that instructs a Federal Reserve Bank to execute the payment order or to pay the beneficiary on a funds-transfer business day that is later than the Fedwire Funds Service funds-transfer business day on which the order is received by the Federal Reserve Bank, unless the Federal Reserve Bank agrees with the

sender in writing to follow such instructions.

■ 9. In § 210.32, revise the section heading and paragraph (b) to read as follows:

§ 210.32 Federal Reserve Bank liability; payment of compensation.

* * * * *

(b) *Payment of compensation.* (1) A Federal Reserve Bank shall satisfy its obligation, or that of another Federal Reserve Bank, to pay compensation in the form of interest under Article 4A by paying such compensation in the form of interest to a sender, receiving bank, beneficiary, or another party to the funds transfer that is entitled to such payment in an amount that is calculated in accordance with section 4A–506 of Article 4A.

(2) If the sender or receiving bank that is the recipient of the payment of compensation is not the party entitled to compensation under Article 4A, the sender or receiving bank shall pass through the benefit of the compensation by making an interest payment, as of the day the compensation was paid by the Federal Reserve Bank, to the party entitled to compensation. The interest payment that is made to the party entitled to compensation shall not be less than the value of the compensation that was paid by the Federal Reserve Bank to the sender or receiving bank. The party entitled to compensation may agree to accept compensation in a form other than a direct interest payment, provided that such an alternative form of compensation is not less than the value of the interest payment that otherwise would be made.

* * * * *

■ 10. In Appendix A of subpart B of part 210:

■ a. Under “*Section 210.25—Authority, Purpose, and Scope*,” revise paragraphs (a), (b)(1) through (6), and (c);

■ b. Revise “*Section 210.26—Definitions*,”

■ c. Under “*Section 210.28—Agreement of Sender*,” revise paragraphs (a), (b)(1) and (2), and (c)(2);

■ d. Under “*Section 210.30—Payment Orders*,” revise paragraphs (b)(2) and (c); and

■ e. Under “*Section 210.32—Federal Reserve Bank Liability; Payment of Compensation*,” revise the heading and paragraphs (a)(2), (b)(1) through (3), and (c).

The revisions read as follows:

Appendix A of Subpart B of Part 210—Commentary

* * * * *

Section 210.25—Authority, Purpose, and Scope

(a) *Authority and purpose.* Section 210.25(a) states that the purpose of subpart B of this part is to provide rules to govern funds transfers through the Fedwire Funds Service and recites the Board’s rulemaking authority for this subpart. Subpart B of this part is federal law and is not a “funds-transfer system rule” as defined in section 4A–501(b) of Article 4A, Funds Transfers, of the Uniform Commercial Code (UCC), as set forth in appendix A of this part. Certain provisions of Article 4A may not be varied by a funds-transfer system rule, but under section 4A–107, regulations of the Board and operating circulars of the Federal Reserve Banks supersede inconsistent provisions of Article 4A to the extent of the inconsistency. In addition, regulations of the Board may preempt inconsistent provisions of state law. Accordingly, subpart B of this part supersedes or preempts inconsistent provisions of state law. It does not affect state law governing funds transfers that does not conflict with the provisions of subpart B of this part, such as Article 4A as enacted in any state, as such state law may apply to parties to funds transfers through the Fedwire Funds Service whose rights and obligations are not governed by subpart B of this part.

(b) *Scope.* (1) Subpart B of this part incorporates the provisions of Article 4A set forth in appendix A of this part. The provisions set forth expressly in the sections of subpart B of this part supersede or preempt any inconsistent provisions of Article 4A as set forth in appendix A of this part or as enacted in any state. The official comments to Article 4A are not incorporated in subpart B of this part or this commentary to subpart B of this part, but the official comments may be useful in interpreting Article 4A as set forth in appendix A of this part. Because section 4A–105 refers to other provisions of the Uniform Commercial Code (e.g., definitions in article 1 of the UCC), these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws, which is now also known as the Uniform Law Commission, and the American Law Institute, from time to time, are also incorporated into subpart B of this part. Subpart B of this part applies to any party to a funds transfer over the Fedwire Funds Service that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order directly to a Federal Reserve Bank, a receiving bank that receives a payment order directly from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank as payment for a payment order accepted by a Federal Reserve Bank. Other parties to a funds transfer over the Fedwire Funds Service are covered by subpart B of this part to the same extent subpart B would apply to them if subpart B were a “funds-transfer system rule” under Article 4A that selected subpart B of this part as the governing law.

(2) The scope of the applicability of a funds-transfer system rule under Article 4A

is specified in section 4A–501(b), and the scope of the choice of law provision is specified in section 4A–507(c). Under section 4A–507(c), a choice of law provision is binding on the participants in a funds-transfer system and certain other parties having notice that the funds-transfer system might be used for the funds transfer and of the choice of law provision. The Uniform Commercial Code provides that a person has notice of a fact when the person has actual knowledge of it, receives a notice or notification of it, or has reason to know that it exists from all the facts and circumstances known to the person at the time in question. (See UCC section 1–202.) However, under sections 4A–507(b) and 4A–507(d), a choice of law by agreement of the parties takes precedence over a choice of law made by funds-transfer system rule.

(3) If originators, receiving banks, and beneficiaries that are not in privity with a Federal Reserve Bank have the notice contemplated by section 4A–507(c) or if those parties agree to be bound by subpart B of this part, subpart B of this part generally would apply to payment orders between those remote parties, including participants in other funds-transfer systems. For example, a payment order may be sent from an originator’s bank through a funds-transfer system other than the Fedwire Funds Service to a receiving bank which, in turn, executes that payment order by sending a payment order through the Fedwire Funds Service. Similarly, a Federal Reserve Bank may send a payment order through the Fedwire Funds Service to a receiving bank that sends it through a funds-transfer system other than the Fedwire Funds Service to the beneficiary’s bank. In the first example, if the originator’s bank has notice that the Fedwire Funds Service may be used to effect part of the funds transfer, the sending of the payment order through the other funds-transfer system to the receiving bank will be governed by subpart B of this part unless the parties to the payment order have agreed otherwise. In the second example, if the beneficiary’s bank has notice that the Fedwire Funds Service may be used to effect part of the funds transfer, the sending of the payment order to the beneficiary’s bank through the other funds-transfer system will be governed by subpart B of this part unless the parties have agreed otherwise. In both cases, the other funds-transfer system’s rules would also apply to, at a minimum, the portion of these funds transfers being made through that funds transfer system. Because subpart B of this part is federal law, subpart B of this part will take precedence over any funds-transfer system rule applicable to the remote sender or receiving bank or to a Federal Reserve Bank to the extent of any inconsistency. If remote parties to a funds transfer, a portion of which is sent through the Fedwire Funds Service, have expressly selected by agreement, in accordance with section 4A–507(b), a law other than subpart B of this part, subpart B of this part would not take precedence over the choice of law made by the agreement even though the remote parties had notice that the Fedwire Funds Service might be used and of the governing law. (See section 4A–507(d).) In

addition, subpart B of this part would not apply to a funds transfer sent through another funds-transfer system where no Federal Reserve Bank handles the funds transfer, even though settlement for the funds transfer is made by means of a separate net settlement or funds transfer through the Fedwire Funds Service.

(4) Under section 4A–108, Article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 *et seq.*). In general, Fedwire funds transfers to or from consumer accounts are exempt from the EFTA and Regulation E (12 CFR part 1005). A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through the Fedwire Funds Service and in part through an automated clearinghouse or other means that is subject to the EFTA or Regulation E. In these cases, subpart B would not govern the portion of the funds transfer that is governed by the EFTA or Regulation E. (See the commentary to § 210.26 in this appendix, “Payment Order”.)

(5) Section 919 of the EFTA, however, governs “remittance transfers,” which may include funds transfers over the Fedwire Funds Service. Section 919 of the EFTA sets out the obligations of remittance transfer providers with respect to consumer senders of remittance transfers. Section 919 of the EFTA generally does not affect the rights and obligations of financial institutions involved in a remittance transfer. To the extent that a Fedwire funds transfer is a “remittance transfer” governed by section 919 of the EFTA, it continues to be governed by subpart B of this part, except that, in the event of an inconsistency between the provisions of subpart B of this part and section 919 of the EFTA, section 919 of the EFTA shall prevail. For example, a consumer may initiate a remittance transfer governed by EFTA section 919 from the consumer’s account at a depository institution, and the depository institution may initiate that transfer by sending a payment order to a Federal Reserve Bank through the Fedwire Funds Service. If the consumer subsequently exercised the right to cancel the remittance transfer and obtain a refund under the terms of section 919 of the EFTA, the depository institution would be required to comply with section 919 even if the institution does not have a right to reverse the payment order sent to the Federal Reserve Bank under subpart B of this part.

(6) Finally, section 4A–404(a) provides that a beneficiary’s bank is obliged to pay the amount of a payment order to the beneficiary on the payment date unless acceptance of the payment order occurs on the payment date after the close of the funds-transfer business day of the bank. The Expedited Funds Availability Act provides that funds received by a bank by wire transfer shall be available for withdrawal not later than the business day after the business day on which such funds are received (12 U.S.C. 4002(a)). That act also preempts any provision of state law that was not effective on September 1, 1989, that is inconsistent with that act or its implementing Regulation CC (12 CFR part 229). Accordingly, the Expedited Funds

Availability Act and Regulation CC may preempt section 4A–404(a) as enacted in any state. In order to ensure that section 4A–404(a), or other provisions of Article 4A, as incorporated in subpart B of this part, do not take precedence over provisions of the Expedited Funds Availability Act, this section 210.25(b)(4) provides that where subpart B of this part establishes rights or obligations that are also governed by the Expedited Funds Availability Act or Regulation CC, the Expedited Funds Availability Act or Regulation CC provision shall apply and subpart B of this part shall not apply.

(c) *Operating Circulars.* The Federal Reserve Banks issue Operating Circulars consistent with this subpart that contain additional provisions applicable to payment orders and other messages sent through the Fedwire Funds Service. Under section 4A–107, these Operating Circulars supersede inconsistent provisions of Article 4A, both as set forth in appendix A of this part and as enacted in any state. These Operating Circulars are not funds-transfer system rules, but, by their terms, they are binding on all parties covered by this subpart.

* * * * *

Section 210.26—Definitions

Article 4A defines many terms (*e.g.*, *beneficiary*, *intermediary bank*, *receiving bank*, *security procedure*) used in subpart B of this part. These terms are defined or listed in sections 4A–103 through 4A–105. These terms, such as the term *bank* (defined in section 4A–105(d)(2)), may differ from comparable terms in subpart A and subpart C of this part. As subpart B of this part incorporates consistent provisions of Article 4A, it incorporates these definitions unless these terms are expressly defined otherwise in subpart B of this part. Subpart B modifies the definitions of five Article 4A terms, *beneficiary*, *beneficiary’s bank*, *payment order*, *receiving bank*, and *sender*. Subpart B also defines terms not defined in Article 4A.

Article 4A. *Article 4A* means the version of that article of the Uniform Commercial Code set forth in appendix A of this part. It does not refer to the law of any particular state unless the context indicates otherwise. Subject to the express provisions of this subpart, this version of Article 4A is incorporated into this subpart and made federal law for transactions covered by subpart B of this part. (See § 210.25(b)(1) and accompanying commentary.) Because section 4A–105 refers to other provisions of the Uniform Commercial Code (*e.g.*, definitions in article 1 of the UCC), these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws, which is now also known as the Uniform Law Commission, and the American Law Institute, from time to time, are also incorporated into subpart B of this part.

Beneficiary, *beneficiary’s bank*, *receiving bank*, and *sender.* The definitions of “beneficiary,” “beneficiary’s bank,” “receiving bank,” and “sender” in subpart B of this part differ from the definitions in sections 4A–103(a)(2) through (4). The subpart B definitions clarify that, for the

purposes of subpart B of this part, these terms are limited to parties in a funds transfer that is sent through the Fedwire Funds Service. For example, the parties to a funds transfer that is sent through the FedNow Service would be governed by subpart C of this part, and would not be a “beneficiary,” “beneficiary’s bank,” “receiving bank,” or “sender” governed by subpart B of this part. The subpart B definition of “beneficiary’s bank” further clarifies that where a Federal Reserve Bank functions as the beneficiary’s bank, it need not be identified in the payment order as the beneficiary’s bank and that a Federal Reserve Bank that receives a payment order as beneficiary is also the beneficiary’s bank with respect to that payment order.

Fedwire Funds Service. This term refers to the funds-transfer system owned and operated by the Federal Reserve Banks that is governed by this subpart. The term does not refer to any particular computer, telecommunications facility, or funds transfer, but rather to the system as a whole, which may include transfers by telephone or by written instrument in particular circumstances. The term does not include the FedNow Service or the system used for automated clearing house transfers.

Off-line bank. Most Fedwire payment orders are sent electronically from a sender to a Federal Reserve Bank or from a Federal Reserve Bank to a receiving bank. Banks that send payment orders to Federal Reserve Banks electronically are often referred to as on-line banks. Some Fedwire Funds Service participants, however, send payment orders to a Federal Reserve Bank or receive payment orders from a Federal Reserve Bank orally by telephone or, in unusual circumstances, in writing. A bank that does not use either a terminal or a computer that links it electronically to a terminal or computer at its Federal Reserve Bank to send payment orders through the Fedwire Funds Service is an off-line bank.

Payment Order. (1) The definition of “payment order” in subpart B of this part differs from the section 4A–103(a)(1) definition. The subpart B definition clarifies that, for the purposes of subpart B of this part, the term includes only instructions transmitted through the Fedwire Funds Service. For example, instructions transmitted through the FedNow Service would be governed by subpart C of this part, and not subpart B of this part. Additionally, the subpart B definition provides that certain messages that are transmitted through the Fedwire Funds Service are not payment orders. Federal Reserve Banks and banks participating in the Fedwire Funds Service send various types of messages relating to payment orders or to other matters, through the Fedwire Funds Service, that are not intended to be payment orders. In some cases, messages sent through the Fedwire Funds Service, such as certain requests for credit transfer, may be payment orders under Article 4A, but are not treated as payment orders under subpart B of this part because they are not an instruction to a Federal Reserve Bank to pay or cause another bank to pay money. Under the subpart B definition, these messages are not “payment

orders” governed by subpart B of this part. The operating circulars of the Federal Reserve Banks may specify those messages that may be transmitted through the Fedwire Funds Service but that are not payment orders.

(2) Subpart B of this part, including its incorporation of Article 4A, governs a payment order even though the originator’s or beneficiary’s account may be a consumer account established primarily for personal, family, or household purposes. Under section 4A–108, Article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act. That act and Regulation E (12 CFR part 1005) implementing it do not apply to funds transfers through the Fedwire Funds Service (see 15 U.S.C. 1693a(7)(B) and 12 CFR 1005.3(c)(3)), except that section 919 of the Electronic Fund Transfer Act may govern a Fedwire funds transfer that is a “remittance transfer.” Such remittance transfers that are Fedwire funds transfers continue to be governed by subpart B of this part. Thus, subpart B of this part applies to all funds transfers through the Fedwire Funds Service even though some such transfers involve originators or beneficiaries who are consumers. (See also § 210.25(b) and accompanying commentary.)

* * * * *

Section 210.28—Agreement of Sender

(a) *Payment of sender’s obligation to a Federal Reserve Bank.* When a sender sends a payment order to a Federal Reserve Bank and the Federal Reserve Bank accepts the payment order by issuing a conforming order executing the sender’s payment order, under section 4A–402 the sender is indebted to the Federal Reserve Bank for the amount of the payment order. Section 4A–403 specifies the various methods by which a sender may settle the obligation under section 4A–402. With respect to a payment order sent through the Fedwire Funds Service, the obligation of a sender (other than a Federal Reserve Bank) is settled by a debit to the account of the sender at a Federal Reserve Bank. Section 210.28(a) provides that a sender, other than a Federal Reserve Bank, that maintains or uses an account at a Federal Reserve Bank authorizes the Federal Reserve Bank to debit that account so that the Federal Reserve Bank can obtain payment for the payment order.

(b) *Overdrafts.* (1) In some cases, debits to a sender’s account will create an overdraft in the sender’s account. The Board and the Federal Reserve Banks have established policies concerning when a Federal Reserve Bank will permit a bank to incur an overdraft in its account at a Federal Reserve Bank. These policies do not give a bank or other sender a right to an overdraft in its account. Subpart B clarifies that a sender does not have a right to such an overdraft. If an overdraft arises, it becomes immediately due and payable at the earliest of the following times: The end of the Fedwire Funds Service funds-transfer business day; the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice to the sender; or the time that the sender suspends payments or is closed by governmental action, such as the appointment of a receiver.

In some cases, a Federal Reserve Bank extends its Fedwire Funds Service operations beyond the standard cut-off time for that funds-transfer business day. For the purposes of this section, unless otherwise specified by the Federal Reserve Bank making such an extension, an overdraft becomes due and payable at the end of the extended operating hours. An overdraft becomes due and payable prior to a Federal Reserve Bank’s cut-off time if the Federal Reserve Bank deems itself insecure and gives notice to the sender. A Federal Reserve Bank that deems itself insecure may give such notice in accordance with the provisions on notice in section 1–202(d) of the UCC, in accordance with any other applicable law or agreement, or by any other reasonable means. An overdraft also becomes due and payable at the time that a bank is closed or suspends payments. For example, an overdraft becomes due and payable if a receiver is appointed for the bank or the bank is prevented from making payments by governmental order. The Federal Reserve Bank need not make demand on the sender for the overdraft to become due and payable.

(2) A sender must cover any overdraft and any other obligation of the sender to the Federal Reserve Bank by the time the overdraft becomes due and payable. By sending a payment order to a Federal Reserve Bank, the sender grants a security interest to the Federal Reserve Bank in all of the assets of the sender possessed or controlled by, or held for the account of, the Federal Reserve Bank in order to secure all obligations due or to become due to the Federal Reserve Bank. The security interest attaches when the overdraft, or other obligation of the sender to the Federal Reserve Bank, becomes due and payable. The security interest does not apply to assets held by the sender as custodian or trustee for the sender’s customers or third parties. Once an overdraft is due and payable, a Federal Reserve Bank may exercise its right of setoff, liquidate collateral, or take other similar action to satisfy the obligation the sender owes to the Federal Reserve Bank.

* * * * *

(c) * * *
(2) Section 4A–505 provides that, in order for a customer to assert a claim objecting to a debit to its account by a receiving bank, the customer must notify the receiving bank of its objection within one year after the customer received notification reasonably identifying the payment order. Subpart B of this part does not vary this one-year claim preclusion period.

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Section 210.30—Payment Orders

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(b) * * *
(2) This section provides that in an interdistrict transfer, a Federal Reserve Bank is authorized and directed to select another Federal Reserve Bank as an intermediary bank. A sender may, however, instruct a Federal Reserve Bank to use a particular intermediary bank by designating that bank as the bank to be credited by that Federal Reserve Bank (or the second Federal Reserve Bank in the case of an interdistrict transfer) in its payment order, in which case the

Federal Reserve Bank will send the payment order to that bank if that bank receives payment orders through the Fedwire Funds Service. A sender may not instruct a Federal Reserve Bank to use its discretion to select an intermediary bank other than a Federal Reserve Bank or an intermediary bank designated by the sender. In addition, a sender may not send a payment order through the Fedwire Funds Service that instructs a Federal Reserve Bank to use a funds-transfer system or means of transmission other than the Fedwire Funds Service unless the sender and the Federal Reserve Bank agree in writing to the use of that funds-transfer system or means of transmission.

(c) *Execution date and payment date.* Generally, the Fedwire Funds Service is a same-day value transfer system through which funds may be transferred from the originator to the beneficiary on the same funds-transfer business day. A sender may not send a payment order to a Federal Reserve Bank that specifies an execution date or payment date later than the day on which the payment order is issued, unless the sender of the order and the Federal Reserve Bank agree in writing to the arrangement.

* * * * *

Section 210.32—Federal Reserve Bank Liability; Payment of Compensation

(a) * * *

(2) This section does not affect the ability of other parties to a funds transfer to agree to be liable for consequential damages, the liability of a Federal Reserve Bank under section 4A–404 (relating to obligation of beneficiary’s bank to pay and give notice to beneficiary), or the liability to parties governed by subpart B of this part for claims not based on the handling of a payment order under subpart B of this part.

(b) *Payment of compensation.* (1) Under article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A–204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A–209 (relating to acceptance of payment order), 4A–210 (relating to rejection of payment order), 4A–304 (relating to duty of sender to report erroneously executed payment order), 4A–305 (relating to liability for late or improper execution or failure to execute a payment order), 4A–402 (relating to obligation of sender to pay receiving bank), and 4A–404 (relating to obligation of beneficiary’s bank to pay and give notice to beneficiary).

(2) Section 210.32(b) requires Federal Reserve Banks to provide compensation through payment in the form of interest. Under section 4A–506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A–506(b), the amount of interest is based on the federal funds rate. Similarly, compensation in the form of interest will be paid to government

senders, receiving banks, or beneficiaries described in § 210.25(d) if they are entitled to interest under subpart B of this part. A Federal Reserve Bank may also, in its discretion, pay compensation in the form of interest directly to a remote party to a Fedwire funds transfer that is entitled to interest, rather than providing compensation to its sender or receiving bank.

(3) If a sender or receiving bank that received a payment of compensation is not the party entitled to compensation under Article 4A, the sender or receiving bank must pass the benefit of the payment made to it to the party that is entitled to compensation. The benefit may be passed on either in the form of a direct payment of interest or in the form of a compensating balance if the party entitled to interest agrees to accept the other form of compensation. In the latter case, the value of the compensating balance must be at least equivalent to the value of the interest payment that otherwise would have been provided.

(c) *Nonwaiver of right of recovery.* Several sections of Article 4A allow a party to a funds transfer to make a claim pursuant to the applicable law of mistake and restitution. Nothing in subpart B of this part or any operating circular issued in accordance with subpart B of this part waives any such claim by a Federal Reserve Bank. A Federal Reserve Bank, however, may waive such a claim by express written agreement in order to settle litigation or for other purposes.

Appendix B to Subpart B of Part 210—Article 4A, Funds Transfers [Removed]

- 11. Remove Appendix B of subpart B of part 210.
- 12. Add subpart C of part 210 to read as follows:

Subpart C—Funds Transfers Through the FedNow Service

Sec.

- 210.40 Authority, purpose, and scope.
- 210.41 Definitions.
- 210.42 Reliance on identifying number.
- 210.43 Agreement of sender.
- 210.44 Agreement of receiving bank.
- 210.45 Payment orders.
- 210.46 Payment by a Federal Reserve Bank to a receiving bank or beneficiary.
- 210.47 Federal Reserve Bank liability; payment of compensation.

Appendix A of Subpart C of Part 210—
Commentary

Subpart C—Funds Transfers Through the FedNow Service

§ 210.40 Authority, purpose, and scope.

(a) *Authority and purpose.* This subpart provides rules to govern funds transfers through the FedNow Service, and has been issued pursuant to the Federal Reserve Act—section 13 (12 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), and paragraphs (i) and (j) of section 11 (12 U.S.C. 248(i) and (j))—and other laws and has the force and effect of federal law. This

subpart is not a funds-transfer system rule as defined in Section 4A–501(b) of Article 4A.

(b) *Scope.* (1) This subpart incorporates the provisions of Article 4A set forth in appendix A of this part. In the event of an inconsistency between the provisions of the sections of this subpart and appendix A of this part, the provisions of the sections of this subpart shall prevail.

(2) Except as otherwise provided in paragraphs (b)(3) and (4) of this section, this subpart, including Article 4A as incorporated herein and operating circulars of the Federal Reserve Banks issued in accordance with paragraph (c) of this section, governs the rights and obligations of the following parties with respect to the FedNow Service:

- (i) Federal Reserve Banks that send or receive payment orders;
- (ii) Senders that send payment orders directly to a Federal Reserve Bank;
- (iii) Receiving banks that receive payment orders directly from a Federal Reserve Bank;
- (iv) Beneficiaries that receive payment for payment orders by means of credit to the beneficiary's settlement account; and

(v) Other parties to a funds transfer any part of which is carried out through the FedNow Service to the same extent as if this subpart were considered a funds-transfer system rule under Article 4A.

(3) A Federal Reserve Bank that is not the sender's Federal Reserve Bank, receiving bank's Federal Reserve Bank, or beneficiary's Federal Reserve Bank is not a party to the funds transfer for purposes of this subpart and Article 4A.

(4) This subpart governs a funds transfer that is sent through the FedNow Service, even if a portion of the funds transfer is governed by the Electronic Fund Transfer Act, but in the event of an inconsistency between the provisions of this subpart and the Electronic Fund Transfer Act, the Electronic Fund Transfer Act shall prevail to the extent of the inconsistency.

(c) *Operating Circulars.* Each Federal Reserve Bank shall issue an Operating Circular consistent with this subpart that governs the details of its funds-transfer operations in connection with the FedNow Service and other matters it deems appropriate. Among other things, the Operating Circular may: Set cut-off times and funds-transfer business days; address security procedures offered by the Federal Reserve Banks to verify the authenticity of a payment order; specify format and media requirements for payment orders; specify the time and method of receipt, execution, and acceptance of a payment

order and settlement of a Federal Reserve Bank's payment obligation for purposes of Article 4A; prescribe time limits for the processing of payment orders; specify service terms governing ancillary features of the FedNow Service; provide for the acceptance of documents in electronic form to the extent any provision in Article 4A requires an agreement or other document to be in writing; identify messages that are not payment orders; and impose charges for funds-transfer services.

(d) *Government senders, receiving banks, and beneficiaries.* Except as otherwise expressly provided by the statutes of the United States, the parties specified in paragraphs (b)(2)(ii) through (v) of this section include a department, agency, instrumentality, independent establishment, or office of the United States, or a wholly-owned or controlled government corporation.

(e) *Financial messaging standards.* Financial messaging standards (e.g., ISO 20022), including the financial messaging components, elements, technical documentation, tags, and terminology used to implement those standards, do not confer or connote legal status or responsibilities. This subpart, including Article 4A as incorporated herein, and the operating circulars of the Federal Reserve Banks issued in accordance with paragraph (c) of this section govern the rights and obligations of parties to funds transfers sent through the FedNow Service as provided in paragraph (b) of this section. To the extent there is any inconsistency between a financial messaging standard adopted by the Federal Reserve Banks for the FedNow Service and this subpart, this subpart shall prevail.

§ 210.41 Definitions.

As used in this subpart, the following definitions apply:

Article 4A means Article 4A of the Uniform Commercial Code as set forth in appendix A of this part, which is incorporated into this subpart in accordance with § 210.40(b).

Beneficiary has the same meaning as in Article 4A, except that the term is limited to a beneficiary in a funds transfer that is sent through the FedNow Service.

Beneficiary's bank has the same meaning as in Article 4A, except that:

(1) The term is limited to a beneficiary's bank in a funds transfer that is sent through the FedNow Service;

(2) A Federal Reserve Bank need not be identified in the payment order in order to be the beneficiary's bank; and

(3) The term includes a Federal Reserve Bank when that Federal Reserve Bank is the beneficiary of a payment order.

Federal Reserve Bank with respect to an entity means the Federal Reserve Bank in whose District the entity is located, as determined under the procedure described in Part 204 of this chapter (Regulation D), even if the entity is not otherwise subject to that section, or, if the entity maintains an account on the books of a different Federal Reserve Bank, the Federal Reserve Bank at which the entity maintains an account.

The FedNow Service means the funds-transfer system owned and operated by the Federal Reserve Banks to support instant payments that is used primarily for the transmission and settlement of payment orders governed by this subpart. The FedNow Service does not include the Fedwire Funds Service.

Interdistrict transfer means a funds transfer involving entries to settlement accounts maintained at two Federal Reserve Banks.

Payment order has the same meaning as in Article 4A, except that the term includes only instructions sent or received through the FedNow Service, and does not include automated clearing house transfers or any communication designated as not being a payment order in an Operating Circular issued by a Federal Reserve Bank under this subpart.

Receiving bank has the same meaning as in Article 4A, except that the term is limited to a receiving bank in a funds transfer that is sent through the FedNow Service.

Sender has the same meaning as in Article 4A, except that the term is limited to a sender in a funds transfer that is sent through the FedNow Service.

Sender's settlement account, receiving bank's settlement account, and beneficiary's settlement account mean an account on the books of a Federal Reserve Bank maintained by the sender, receiving bank, or beneficiary, respectively. The term also includes any account on a Federal Reserve Bank's books used with respect to the FedNow Service by the sender, receiving bank, or beneficiary, respectively, by agreement with its Federal Reserve Bank, any other Federal Reserve Bank on whose books the settlement account is maintained, and the account-holder.

§ 210.42 Reliance on identifying number.

(a) *Reliance by a Federal Reserve Bank on number to identify a beneficiary's bank.* A Federal Reserve Bank that receives a payment order from a sender containing a number that

identifies the beneficiary's bank may rely on the number, even if it identifies a bank different from the bank identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* A Federal Reserve Bank, acting as a beneficiary's bank, that receives a payment order from a sender containing a number that identifies the beneficiary may rely on the number, even if it identifies a person different from the person identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

§ 210.43 Agreement of sender.

(a) *Payment of sender's obligation to a Federal Reserve Bank.* A sender (other than a Federal Reserve Bank), by maintaining or using a settlement account with a Federal Reserve Bank, authorizes the sender's Federal Reserve Bank to obtain payment for the sender's payment orders by debiting, or causing any other Federal Reserve Bank on whose books the settlement account is maintained to debit, the amount of the payment order from the settlement account. The sender remains responsible for payment if the Federal Reserve Bank on whose books the settlement account is maintained does not, for any reason, obtain payment by debiting that account.

(b) *Overdrafts.* (1) A sender does not have the right to an overdraft in its settlement account. In the event an overdraft is created, the overdraft shall be due and payable immediately, without the need for a demand by the Federal Reserve Bank, at the earliest of the following times:

(i) At the end of the FedNow funds-transfer business day;

(ii) At the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender; or

(iii) At the time the sender suspends payments or is closed.

(2) The sender shall have in its settlement account, at the time the overdraft is due and payable, a balance of actually and finally collected funds sufficient to cover the aggregate amount of all its obligations to the Federal Reserve Bank, whether the obligations result from the acceptance of a payment order or otherwise.

(3) To secure any overdraft, as well as any other obligation due or to become due to its Federal Reserve Bank, a sender, by sending a payment order to a Federal Reserve Bank that is accepted by the Federal Reserve Bank, grants to the Federal Reserve Bank a security interest in all of its assets in the possession or control of, or held for the account of, the Federal Reserve Bank. The security interest attaches when an overdraft, or any other obligation to the Federal Reserve Bank, becomes due and payable.

(4) A Federal Reserve Bank may take any action authorized by law to recover the amount of an overdraft that is due and payable, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

(5) If a sender, other than a government sender described in § 210.40(d), incurs an overdraft in its settlement account as a result of a debit to the account by a Federal Reserve Bank under paragraph (a) of this section, the settlement account will be subject to any applicable overdraft charges, regardless of whether the overdraft has become due and payable. A Federal Reserve Bank may debit the settlement account under paragraph (a) of this section immediately on acceptance of the payment order.

(c) *Review of payment orders.* A sender, by sending a payment order to a Federal Reserve Bank, agrees that for the purposes of sections 4A–204(a) and 4A–304 of Article 4A, a reasonable time to notify a Federal Reserve Bank of the relevant facts concerning an unauthorized or erroneously executed payment order is within 60 calendar days after the sender receives notice that the payment order was accepted or that the sender's settlement account was debited with respect to the payment order.

§ 210.44 Agreement of receiving bank.

(a) *Payment.* A receiving bank (other than a Federal Reserve Bank) that receives a payment order from its Federal Reserve Bank authorizes that Federal Reserve Bank to pay for the payment order by crediting, or causing any other Federal Reserve Bank on whose books the settlement account is maintained to credit, the amount of the payment order to the settlement account.

(b) *Funds availability.* (1) A beneficiary's bank (other than a Federal Reserve Bank) that accepts a payment order over the FedNow Service is obliged to pay the amount of the order to the beneficiary of the order

immediately after its acceptance of the payment order, by crediting an account of the beneficiary in accordance with section 4A–405(a) of Article 4A. The rights and obligations with respect to the availability of funds are also governed by the Expedited Funds Availability Act and the Board's Regulation CC, Availability of Funds and Collection of Checks.

(2) Nothing in paragraph (b)(1) of this section or any Operating Circular issued hereunder shall create any rights that the beneficiary or any party other than a Federal Reserve Bank may assert against the beneficiary's bank, or affect any liability of the beneficiary's bank to the beneficiary or any party other than a Federal Reserve Bank under Article 4A or other law.

(3) In circumstances where the beneficiary's bank (other than a Federal Reserve Bank) has reasonable cause to believe that the beneficiary is not entitled or permitted to receive payment, the beneficiary's bank may notify its Federal Reserve Bank that it requires additional time to determine whether to accept the payment order. In the event the beneficiary's bank gives such notice to its Federal Reserve Bank, for purposes of this subpart and Article 4A the beneficiary's bank does not accept the payment order upon its receipt of payment in the amount of the payment order by a Federal Reserve Bank.

§ 210.45 Payment orders.

(a) *Rejection.* A sender shall not send a payment order to a Federal Reserve Bank unless authorized to do so by the Federal Reserve Bank. A Federal Reserve Bank may reject, or impose conditions that must be satisfied before it will accept, a payment order for any reason.

(b) *Selection of an intermediary bank.* For an interdistrict transfer through the FedNow Service, a Federal Reserve Bank is authorized and directed to execute a payment order through another Federal Reserve Bank. A sender shall not send a payment order to a Federal Reserve Bank that requires the Federal Reserve Bank to send a payment order to an intermediary bank (other than a Federal Reserve Bank). A sender shall not send to a Federal Reserve Bank a payment order through the FedNow Service that instructs use by a Federal Reserve Bank of a funds-transfer system or means of transmission other than the FedNow Service, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

(c) *Execution Date and Payment Date.* A sender shall not issue a payment order through the FedNow Service that

instructs a Federal Reserve Bank to execute the payment order or to pay the beneficiary on a FedNow funds-transfer business day that is later than the funds-transfer business day on which the order is received by the Federal Reserve Bank, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

§ 210.46 Payment by a Federal Reserve Bank to a receiving bank or beneficiary.

(a) *Payment to a receiving bank.* Payment of a Federal Reserve Bank's obligation to pay a receiving bank (other than a Federal Reserve Bank) occurs at the earlier of the time when the amount of the payment order is credited to the receiving bank's settlement account or when the payment order is sent to the receiving bank.

(b) *Payment to a beneficiary.* Payment by a Federal Reserve Bank to a beneficiary of a payment order, where the Federal Reserve Bank is the beneficiary's bank, occurs at the earlier of the time when the amount of the payment order is credited to the beneficiary's settlement account or when notice of the credit is sent to the beneficiary.

§ 210.47 Federal Reserve Bank liability; payment of compensation.

(a) *Damages.* In connection with its handling of a payment order under this subpart, a Federal Reserve Bank shall not be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank, governed by this subpart, for any damages other than those payable under Article 4A. A Federal Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank for consequential damages under section 4A–305(d) of Article 4A.

(b) *Payment of compensation.* (1) A Federal Reserve Bank shall satisfy its obligation, or that of another Federal Reserve Bank, to pay compensation in the form of interest under Article 4A by paying such compensation to a sender, receiving bank, beneficiary, or another party to the funds transfer that is entitled to such payment in an amount that is calculated in accordance with section 4A–506 of Article 4A.

(2) If the sender or receiving bank that is the recipient of the payment of compensation is not the party entitled to compensation under Article 4A, the sender or receiving bank shall pass through the benefit of the compensation by making an interest payment, as of the day the compensation was paid by the Federal Reserve Bank, to the party entitled to compensation. The interest payment that is made to the party

entitled to compensation shall not be less than the value of the compensation that was paid by the Federal Reserve Bank to the sender or receiving bank. The party entitled to compensation may agree to accept compensation in a form other than a direct interest payment, provided that such an alternative form of compensation is not less than the value of the interest payment that otherwise would be made.

(c) *Nonwaiver of right of recovery.* Nothing in this subpart or any operating circular issued hereunder shall constitute, or be construed as constituting, a waiver by a Federal Reserve Bank of a cause of action for recovery under any applicable law of mistake and restitution.

Appendix A of Subpart C of Part 210—Commentary

The Commentary provides background material to explain the intent of the Board of Governors of the Federal Reserve System (Board) in adopting a particular provision in the subpart and to help readers interpret that provision. In some comments, examples are offered. The Commentary constitutes an official Board interpretation of subpart C of this part. Commentary is not provided for every provision of subpart C of this part, as some provisions are self-explanatory.

Section 210.40—Authority, Purpose, and Scope

(a) *Authority and purpose.* Section 210.40(a) states that the purpose of subpart C of this part is to provide rules to govern funds transfers through the FedNow Service and recites the Board's rulemaking authority for this subpart. Subpart C of this part is federal law and is not a "funds-transfer system rule," as defined in section 4A–501(b) of Article 4A, Funds Transfers, of the Uniform Commercial Code (UCC), as set forth in appendix A of this part. Certain provisions of Article 4A may not be varied by a funds-transfer system rule, but under section 4A–107, regulations of the Board and Operating Circulars of the Federal Reserve Banks supersede inconsistent provisions of Article 4A to the extent of the inconsistency. In addition, regulations of the Board may preempt inconsistent provisions of state law. Accordingly, subpart C of this part supersedes or preempts inconsistent provisions of state law. It does not affect state law governing funds transfers that does not conflict with the provisions of subpart C of this part, such as Article 4A, as enacted in any state, as such state law may apply to parties to funds transfers through the FedNow Service whose rights and obligations are not governed by subpart C of this part.

(b) *Scope.* (1) Subpart C of this part incorporates the provisions of Article 4A set forth in appendix A of this part. The provisions set forth expressly in the sections of subpart C of this part supersede or preempt any inconsistent provisions of Article 4A as set forth in appendix A of this part or as enacted in any state. The official comments to Article 4A are not incorporated

in subpart C of this part or this commentary to subpart C of this part, but the official comments may be useful in interpreting Article 4A as set forth in appendix A of this part. Because section 4A–105 refers to other provisions of the Uniform Commercial Code (e.g., definitions in article 1 of the UCC), these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws, which is now also known as the Uniform Law Commission, and the American Law Institute, from time to time, are also incorporated into subpart C of this part. Subpart C of this part applies to any party to a funds transfer sent through the FedNow Service that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order to a Federal Reserve Bank through the FedNow Service, a receiving bank that receives a payment order from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank as payment for a payment order accepted by a Federal Reserve Bank. Subpart C of this part also applies to Federal Reserve Banks that send or receive payment orders over the FedNow Service. For example, if a sender settles its activity over the FedNow Service in the account of a correspondent bank, the sender's Federal Reserve Bank would be a bank in the funds transfer chain, but the Federal Reserve Bank of the correspondent bank would not be a sender or receiving bank with respect to the payment order and would not be a party to the funds transfer. Other parties to a funds transfer sent through the FedNow Service are covered by this subpart to the same extent that this subpart would apply to them if this subpart were a “funds-transfer system rule” under Article 4A that selected subpart C of this part as the governing law.

(2) The scope of the applicability of a funds-transfer system rule under Article 4A is specified in section 4A–501(b), and the scope of the choice of law provision is specified in section 4A–507(c). Under section 4A–507(c), a choice of law provision is binding on the participants in a funds-transfer system and certain other parties having notice that the funds-transfer system might be used for the funds transfer and of the choice of law provision. The Uniform Commercial Code provides that a person has notice of a fact when the person has actual knowledge of it, receives a notice or notification of it, or has reason to know that it exists from all the facts and circumstances known to the person at the time in question. (See UCC section 1–202.) However, under sections 4A–507(b) and 4A–507(d), a choice of law by agreement of the parties takes precedence over a choice of law made by funds-transfer system rule.

(3) With respect to funds transfers sent through the FedNow Service, if originators and beneficiaries that are not in privity with a Federal Reserve Bank have the notice contemplated by Section 4A–507(c) or if those parties agree to be bound by subpart C of this part, subpart C of this part generally would apply to those remote parties. If remote parties to a funds transfer, a portion of which is sent through the FedNow Service,

have expressly selected by agreement a law other than subpart C of this part under section 4A–507(b), subpart C of this part would not take precedence over the choice of law made by the agreement even though the remote parties had notice that the FedNow Service may be used and of the governing law. (See 4A–507(d).) In addition, subpart C of this part would not apply to a funds transfer sent through a funds-transfer system other than the FedNow Service, even though settlement for the funds transfer is made by means of a separate funds transfer through the FedNow Service.

(4) Under section 4A–108, Article 4A does not apply to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 *et seq.*). A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out through the FedNow Service and could potentially be subject to the EFTA and Regulation E (12 CFR part 1005) implementing it. If so, the funds transfer continues to also be governed by subpart C, except that, in the event of an inconsistency between the provisions of subpart C and the EFTA, the EFTA shall prevail to the extent of the inconsistency. (See also the commentary to section 210.41 in this appendix, “Payment Order.”) For example, a funds transfer may be initiated from a consumer's account at a depository institution, and the depository institution may execute that payment order by sending a conforming payment order to a Reserve Bank through the FedNow Service. If that transfer is subject to the EFTA, then where the consumer subsequently reports the transfer as an unauthorized electronic fund transfer to its depository institution and exercises the right to obtain reimbursement under the terms of the EFTA, the depository institution would be required to comply with the EFTA even if the institution does not have a right to reverse the payment order sent to the Reserve Bank through the FedNow Service under subpart C.

(c) *Operating Circulars.* The Federal Reserve Banks issue Operating Circulars consistent with this subpart that contain additional provisions applicable to payment orders and other messages sent through the FedNow Service. Under section 4A–107, this Operating Circular supersedes inconsistent provisions of Article 4A, both as set forth in appendix A of this part and as enacted in any state. These Operating Circulars are not funds-transfer system rules, but, by their terms, they are binding on all parties covered by this subpart.

(d) *Government senders, receiving banks, and beneficiaries.* This section clarifies that unless a statute of the United States provides otherwise, subpart C of this part applies to governmental entities.

(e) *Financial messaging standards.* This paragraph makes clear that financial messaging standards, including the financial messaging components, elements, technical documentation, tags, and terminology used to implement those standards, do not confer or connote legal status or responsibilities. Instead, subpart C of this part and Federal Reserve Bank operating circulars govern the rights and obligations of parties to funds

transfers sent through the FedNow Service as provided in § 210.40(b). Thus, to the extent there is any inconsistency between a financial messaging standard adopted by the FedNow Service and subpart C of this part, subpart C of this part, including Article 4A as set forth in appendix A of this part, will prevail. In the ISO 20022 financial messaging standard, for example, the term agent is used to refer to a variety of bank parties to a funds transfer (e.g., *debtor agent*, *creditor agent*, *intermediary agent*). Notwithstanding use of that term in the standard and in message tags, such banks are not the agents of any party to a funds transfer and owe no duty to any other party to such a funds transfer except as provided in subpart C of this part (including Article 4A) or by express agreement. The ISO 20022 financial messaging standard also permits information to be carried in a funds-transfer message regarding persons that are not parties to that funds transfer (e.g., *ultimate debtor*, *ultimate creditor*, *initiating party*) for regulatory, compliance, remittance, or other purposes. An “ultimate debtor” is not an “originator” as defined in Article 4A. The relationship between the ultimate debtor and the originator (what the ISO 20022 standard calls the “debtor”) is determined by law other than Article 4A.

Section 210.41—Definitions

Article 4A defines many terms (e.g., *beneficiary*, *intermediary bank*, *receiving bank*, *security procedure*) used in this subpart. These terms are defined or listed in sections 4A–103 through 4A–105. These terms, such as the term bank (defined in section 4A–105(d)(2)), may differ from comparable terms in subpart A and subpart B of this part. As subpart C of this part incorporates consistent provisions of Article 4A, it incorporates these definitions unless these terms are expressly defined otherwise in subpart C of this part. This subpart modifies the definitions of five Article 4A terms: *Beneficiary*, *beneficiary's bank*, *payment order*, *receiving bank*, and *sender*. This subpart also defines terms not defined in Article 4A.

Article 4A. Article 4A means the version of that article of the Uniform Commercial Code set forth in appendix A of this part. It does not refer to the law of any particular state unless the context indicates otherwise. Subject to the express provisions of this Subpart, this version of Article 4A is incorporated into this subpart and made federal law for transactions covered by this subpart. (See § 210.40(b)(1) and accompanying commentary.) Because section 4A–105 refers to other provisions of the Uniform Commercial Code (e.g., definitions in article 1 of the UCC) these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws, which is now also known as the Uniform Law Commission, and the American Law Institute, from time to time, are also incorporated in subpart C of this part.

Beneficiary, beneficiary's bank, receiving bank, and sender. The definitions of “beneficiary,” “beneficiary's bank,” “receiving bank,” and “sender” in subpart C of this part differ from the definitions in sections 4A–103(a)(2)–(4). The subpart C

definition clarifies that, for the purposes of subpart C of this part, these terms are limited to parties in a funds transfer that is sent through the FedNow Service. For example, the parties to a funds transfer that is sent through the Fedwire Funds Service would be governed by subpart B of this part, and would not be a “beneficiary,” “beneficiary’s bank,” “receiving bank,” or “sender” governed by subpart C. The definition of “beneficiary’s bank” in subpart C further clarifies that where a Federal Reserve Bank functions as the beneficiary’s bank, it need not be identified in the payment order as the beneficiary’s bank and that a Federal Reserve Bank that receives a payment order as beneficiary is also the beneficiary’s bank with respect to that payment order.

The FedNow Service. The FedNow Service refers to the funds-transfer system owned and operated by the Federal Reserve Banks to support instant payments that is governed by this Subpart. The term does not refer to any particular computer, telecommunications facility, or funds transfer, but rather to the system as a whole. The FedNow Service does not include the Fedwire Funds Service or the system used for automated clearing house transfers.

Payment Order. (1) The definition of “payment order” in subpart C of this part differs from the section 4A–103(a)(1) definition. The subpart C definition clarifies that, for the purposes of subpart C of this part, the term includes only instructions transmitted through the FedNow Service. For example, instructions transmitted through the Fedwire Funds Service would be governed by subpart B of this part, and not subpart C.

Additionally, the subpart C definition provides that certain messages that are transmitted through the FedNow Service are not payment orders. Federal Reserve Banks and banks participating in the FedNow Service send various types of messages relating to payment orders or to other matters, through the FedNow Service, that are not intended to be payment orders. In some cases, messages sent through the FedNow Service, such as certain requests for payment, may be payment orders under Article 4A, but are not treated as payment orders under subpart C because they are not an instruction to a Federal Reserve Bank to pay or cause another bank to pay money. Under the subpart C definition, these messages are not “payment orders” governed by this subpart. The operating circulars of the Federal Reserve Banks may specify those messages that may be transmitted through the FedNow Service but that are not payment orders.

(2) Subpart C, including its incorporation of Article 4A, governs a payment order even though the originator’s or beneficiary’s account may be a consumer account established primarily for personal, family, or household purposes. Under section 4A–108, Article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act. That Act, and Regulation E (12 CFR part 1005) implementing it, may govern a transfer through the FedNow Service that is from a consumer originator or to a consumer

beneficiary. In the event that a transfer through the FedNow Service is subject to the EFTA, the transfer continues to also be governed by this subpart, except that, in the event of an inconsistency between the provisions of subpart C and the EFTA, the EFTA shall prevail to the extent of the inconsistency. (See also § 210.40(b) and accompanying commentary.) Thus, this subpart applies to all funds transfers through the FedNow Service even though some such transfers involve originators or beneficiaries that are consumers.

Sender’s settlement account, receiving bank’s settlement account, and beneficiary’s settlement account. A FedNow participant must designate an account on the books of a Federal Reserve Bank that the Federal Reserve Banks may use to settle the participant’s activity over the FedNow Service. A FedNow participant may settle its activity over the FedNow Service in its master account. Alternatively, it may designate the account of a correspondent bank that the Federal Reserve Banks may use to settle activity through the service, subject to the correspondent bank’s agreement to any such designation.

Section 210.42—Reliance on Identifying Number

(a) *Reliance by a Federal Reserve Bank on number to identify intermediary bank or beneficiary’s bank.* Section 4A–208 provides that a receiving bank, such as a Federal Reserve Bank, may rely on the routing number of an intermediary bank or the beneficiary’s bank specified in a payment order as identifying the appropriate intermediary bank or beneficiary’s bank, even if the payment order identifies another bank by name, provided that the receiving bank does not know of the inconsistency. Under section 4A–208(b)(2), if the sender of the payment order is not a bank, a receiving bank may rely on the number only if the sender had notice before the receiving bank accepted the sender’s order that the receiving bank might rely on the number. This section provides this notice to entities that are not banks, such as the Department of the Treasury, that send payment orders directly to a Federal Reserve Bank through the FedNow Service.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* Section 4A–207 provides that a beneficiary’s bank, such as a Federal Reserve Bank, may rely on the number identifying a beneficiary, such as the beneficiary’s account number, specified in a payment order as identifying the appropriate beneficiary, even if the payment order identifies another beneficiary by name, provided that the beneficiary’s bank does not know of the inconsistency. Under section 4A–207(c)(2), if the originator is not a bank, an originator is not obliged to pay for a payment order if the originator did not have notice that the beneficiary’s bank might rely on the identifying number and the person paid on the basis of the identifying number was not entitled to receive payment. This section of subpart C provides this notice to entities that are not banks, such as the Department of the Treasury, that are originators of payment orders sent directly by

the originators to a Federal Reserve Bank through the FedNow Service, where that Federal Reserve Bank or another Federal Reserve Bank is the beneficiary’s bank (see also section 4A–402(b), providing that a sender must pay a beneficiary’s bank for a payment order accepted by the beneficiary’s bank).

Section 210.43—Agreement of Sender

(a) *Payment of sender’s obligation to a Federal Reserve Bank.* When a sender sends a payment order to a Federal Reserve Bank and the Federal Reserve Bank accepts the payment order by issuing a conforming order executing the sender’s payment order, under section 4A–402, the sender is indebted to the Federal Reserve Bank for the amount of the payment order. Section 4A–403 specifies the various methods by which a sender may settle the obligation under section 4A–402. With respect to a payment order sent through the FedNow Service, the obligation of a sender (other than a Federal Reserve Bank) is settled by a debit to the account of the sender at a Federal Reserve Bank. Section 210.43(a) provides that a sender, other than a Federal Reserve Bank, that maintains or uses a settlement account at a Federal Reserve Bank authorizes its Federal Reserve Bank to debit, or cause any other Federal Reserve Bank on whose books the settlement account is maintained to debit, that account, so that the Federal Reserve Bank can obtain payment for the payment order.

(b) *Overdrafts.* (1) In some cases, debits to a sender’s settlement account will create an overdraft in the settlement account. The Board and the Federal Reserve Banks have established policies concerning when a Federal Reserve Bank will permit a bank to incur an overdraft in its account at a Federal Reserve Bank. These policies do not give a bank or other sender a right to an overdraft in its account. Subpart C clarifies that a sender does not have a right to such an overdraft. If an overdraft arises, it becomes immediately due and payable at the earliest of the following times: The end of the FedNow funds-transfer business day; the time the Federal Reserve Bank in its sole discretion, deems itself insecure and gives notice to the sender; or the time that the sender suspends payments or is closed by governmental action, such as the appointment of a receiver. In some cases, a Federal Reserve Bank extends its FedNow operations beyond the standard cut-off time for that FedNow funds-transfer business day. For the purposes of this section, unless otherwise specified by the Federal Reserve Bank making such an extension, an overdraft becomes due and payable at the end of the extended operating hours. An overdraft becomes due and payable prior to a Federal Reserve Bank’s cut-off time if the Federal Reserve Bank deems itself insecure and gives notice to the sender. A Federal Reserve Bank that deems itself insecure may give such notice in accordance with the provisions on notice in section 1–202(d) of the UCC, in accordance with any other applicable law or agreement, or by any other reasonable means. An overdraft also becomes due and payable at the time that a bank is closed or suspends payments. For example, an overdraft

becomes due and payable if a receiver is appointed for the bank or the bank is prevented from making payments by governmental order. The Federal Reserve Bank need not make demand on the sender for the overdraft to become due and payable.

(2) A sender must cover any overdraft and any other obligation of the sender to the Federal Reserve Bank by the time the overdraft becomes due and payable. By sending a payment order to a Federal Reserve Bank, the sender grants a security interest to the Federal Reserve Bank in all of the assets of the sender possessed or controlled by, or held for the account of, the Federal Reserve Bank in order to secure all obligations due or to become due to the Federal Reserve Bank. The security interest attaches when the overdraft, or other obligation of the sender to the Federal Reserve Bank, becomes due and payable. The security interest does not apply to assets held by the sender as custodian or trustee for the sender's customers or third parties. Once an overdraft is due and payable, a Federal Reserve Bank may exercise its right of set off, liquidate collateral, or take other similar action to satisfy the obligation the sender owes to the Federal Reserve Bank.

(c) *Review of payment orders.* (1) Under section 4A–204, a receiving bank is required to refund the principal amount of an unauthorized payment order that the sender was not obliged to pay, together with interest on the refundable amount calculated from the date that the receiving bank received payment to the date of the refund. The sender is not entitled to compensation in the form of interest if the sender fails to exercise ordinary care to determine that the order was not authorized and to notify the receiving bank within a reasonable time after the sender receives a notice that the payment order was accepted or that the sender's account was debited with respect to the order. Similarly, under section 4A–304, if a sender of a payment order that was erroneously executed does not notify the bank receiving the payment order within a reasonable time, the bank is not liable to the sender for compensation in the form of interest on any amount refundable to the sender. Section 210.43(c) establishes 60 calendar days as the reasonable period of time for the purposes of these provisions of Article 4A.

(2) Section 4A–505 provides that in order for a customer to assert a claim objecting to a debit to its account by a receiving bank, the customer must notify the receiving bank of its objection within one year after the customer received notification reasonably identifying the payment order. Subpart C of this part does not vary this one-year claim preclusion period.

Section 210.44—Agreement of Receiving Bank

(b) *Funds availability.* (1) Section 4A–209(b) provides that a beneficiary's bank accepts a payment order at the earliest of certain specified events, including when the bank receives payment for the entire amount of the order from the sender (see section 4A–209(b)(2)). Section 4A–404(a) provides that if a beneficiary's bank accepts a payment order, it is obliged to pay the amount of a payment

order to the beneficiary on the payment date unless acceptance of the payment order occurs on the payment date after the close of the funds-transfer business day of the bank. Section 4A–405(a) provides that if a beneficiary's bank pays the beneficiary by crediting an account of the beneficiary on its own books, payment of the bank's obligation under Section 4A–404(a) occurs when and to the extent (i) the bank notifies the beneficiary that it may withdraw the amount of the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the payment order are otherwise made available to the beneficiary by the bank.

(2) Section 210.44(b)(1) provides that if a FedNow participant that is the beneficiary's bank accepts a payment order, it must pay the beneficiary by credit to the beneficiary's account in accordance with section 4A–405(a) of Article 4A, and it must do so immediately after its acceptance of the payment order. This section further clarifies that the provisions of the Expedited Funds Availability Act (12 U.S.C. 4002(a)) and its implementing regulation, Regulation CC (12 CFR part 229), also govern. Regulation CC provides that funds received by a bank by an electronic payment shall be available for withdrawal not later than the business day after the banking day on which such funds are received. (12 CFR 229.10(b).) Because Subpart C of this part requires funds to be made available on a more prompt basis than the availability requirements of the Expedited Funds Availability Act and Regulation CC, that act and Regulation CC do not preempt or invalidate subpart C. For example, if a beneficiary's bank accepts a payment order through the FedNow Service at 10 a.m. but does not make funds available to the beneficiary until 5 p.m., the bank has failed to satisfy its obligations under subpart C of this part even if it has satisfied its obligations under Regulation CC.

(3) Section 210.44(b)(2) clarifies that the obligation for the beneficiary's bank to provide immediate funds availability to the beneficiary under section 210.44(b)(1), and any Operating Circular issued in accordance with subpart C, should not be construed as creating any rights that the beneficiary or any party other than a Federal Reserve Bank may assert against the beneficiary's bank, or affect any liability of the beneficiary's bank to the beneficiary or any party other than a Federal Reserve Bank under Article 4A or other law. In the example in this paragraph (b), where the beneficiary's bank accepts a payment order through the FedNow Service at 10 a.m. but does not make funds available to the beneficiary until 5 p.m., the bank has failed to satisfy its obligations under § 210.44(b)(1) but the beneficiary would not have a claim or right to assert against the bank under that provision.

(4) Section 210.46(a) provides that payment by a Federal Reserve Bank to a receiving bank occurs when the receiving bank's settlement account is credited or when the payment order is sent by the Federal Reserve Bank to the receiving bank, whichever is earlier, and would ordinarily be considered acceptance of the payment order by the beneficiary's bank under section 4A–

209(b). Section 210.44(b)(3) provides that notwithstanding section 4A–209(b), in certain circumstances a beneficiary's bank is not deemed to accept a payment order at such time as it receives payment from its Federal Reserve Bank. Specifically, where the beneficiary's bank has reasonable cause to believe that the beneficiary is not entitled or permitted to receive payment and the beneficiary's bank notifies its Federal Reserve Bank that it requires additional time to determine whether to accept the payment order, this section provides that for purposes of subpart C and Article 4A, the beneficiary's bank does not accept the payment order even if it has received payment for the entire amount of the order from its Federal Reserve Bank as provided in § 210.46. For example, if the beneficiary's bank has reasonable cause to believe that making funds available to the beneficiary may violate applicable U.S. sanctions, the beneficiary's bank may notify its Federal Reserve Bank that it requires additional time to determine whether to accept the payment order, including to investigate if the beneficiary is subject to applicable sanctions; in the event the beneficiary's bank gives such notice, the beneficiary's bank would not be deemed to have accepted the payment order at the time it receives payment from its Federal Reserve Bank.

Section 210.45—Payment Orders

(a) *Rejection.* (1) A sender must make arrangements with its Federal Reserve Bank before it can send payment orders to the Federal Reserve Bank. Federal Reserve Banks reserve the right to reject or impose conditions on the acceptance of payment orders for any reason. For example, a Federal Reserve Bank might reject or impose conditions on accepting a payment order where a sender does not have sufficient funds in its settlement account with the Federal Reserve Bank to cover the amount of the sender's payment order and other obligations of the sender due or to become due to the Federal Reserve Bank. As a further example, a Federal Reserve Bank may reject a payment order that is not successfully processed within time limits established by the Federal Reserve Banks. A Federal Reserve Bank may require a sender to execute a written agreement concerning security procedures or other matters before the sender may send payment orders to the Federal Reserve Bank.

(b) *Selection of an intermediary bank.* (1) Under section 4A–302, if a receiving bank (other than a beneficiary's bank), such as a Federal Reserve Bank, accepts a payment order, it must issue a payment order that complies with the sender's order. The sender's order may include instructions concerning an intermediary bank to be used that must be followed by a receiving bank (see section 4A–302(a)(1)). If the sender does not designate any intermediary bank in its payment order, the receiving bank may select an intermediary bank through which the sender's payment order can be expeditiously issued to the beneficiary's bank so long as the receiving bank exercises ordinary care in selecting the intermediary bank (see section 4A–302(b)).

(2) This section provides that in an interdistrict transfer, a Federal Reserve Bank is authorized and directed to select another Federal Reserve Bank as an intermediary bank. A sender may not instruct a Federal Reserve Bank to use a particular intermediary bank or to use its discretion to select an intermediary bank other than a Federal Reserve Bank or an intermediary bank designated by the sender. In addition, a sender may not send a payment order through the FedNow Service that instructs a Federal Reserve Bank to use a funds-transfer system or means of transmission other than the FedNow Service, unless the sender and the Federal Reserve Bank agree in writing to the use of that funds-transfer system or means of transmission.

(c) *Execution date and payment date.* (1) Under 4A–301(b), the “execution date” of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender’s order. Under section 4A–401, the “payment date” of a payment order is the day on which the amount of the order is payable to the beneficiary by the beneficiary’s bank. The execution date and the payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received (see sections 4A–301(b) and 4A–401). Section 4A–106, provides for the time that a payment order is received, including in the event that a receiving bank fixes a cut-off time for the receipt and processing of payment orders. If the bank receives a payment order after its cut-off time, the bank may treat the payment order as received at the opening of the next funds-transfer business day (see section 4A–106(a)).

(2) The FedNow Service is designed to be an instant value transfer system through which funds may be transferred from the originator to the beneficiary on the same funds-transfer business day. This section provides that a sender may not send a payment order to a Federal Reserve Bank that specifies an execution date or payment date later than the day on which the payment order is issued, unless the sender of the order and the Federal Reserve Bank agree in writing to the arrangement.

Section 210.46—Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary

(a) *Payment to a receiving bank.* (1) Under section 4A–402, when a Federal Reserve Bank executes a sender’s payment order by issuing a conforming order to a receiving bank that accepts the payment order, the Federal Reserve Bank must pay the receiving bank the amount of the payment order. Section 210.44(a) authorizes a Federal Reserve Bank to make the payment by crediting, or causing any other Federal Reserve Bank on whose books the settlement account is maintained to credit, the settlement account of the receiving bank. Section 210.46(a) provides that the payment occurs when the receiving bank’s settlement account is credited or when the payment order is sent by the Federal Reserve Bank to the receiving bank, whichever is earlier.

Ordinarily, payment will occur during the FedNow funds-transfer business day a short time after the payment order is received. This credit is final and irrevocable when made and constitutes final settlement under section 4A–403. Payment does not waive a Federal Reserve Bank’s right of recovery under the applicable law of mistake and restitution (see § 210.47(c)), affect a Federal Reserve Bank’s right to apply the funds to any obligation due or to become due to the Federal Reserve Bank, or affect legal process or claims by third parties on the funds.

(2) This section on final payment does not apply to settlement for payment orders between Federal Reserve Banks. These payment orders are settled by other means.

(b) *Payment to a beneficiary.* Section 210.46(b) specifies when a Federal Reserve Bank makes payment to a beneficiary for which it is the beneficiary’s bank. As in the case of payment to a receiving bank, this payment occurs at the earlier of the time that the Federal Reserve Bank credits the beneficiary’s settlement account or sends notice of the credit to the beneficiary, and is final and irrevocable when made.

Section 210.47—Federal Reserve Bank Liability; Payment of Compensation

(a) *Damages.* (1) Under section 4A–305(d), damages for failure of a receiving bank to execute a payment order that it was obligated to execute by express agreement are limited to expenses in the transaction and incidental expenses and interest and do not include additional damages, including consequential damages, unless they are provided for in an express written agreement of the receiving bank. This section clarifies that in connection with the handling of payment orders, Federal Reserve Banks may not agree to be liable for consequential damages under this provision and shall not be liable for damages other than those that may be due under Article 4A to parties governed by this subpart. Any agreement in conflict with these provisions would not be effective, because it would be in violation of subpart C.

(2) This section does not affect the ability of other parties to a funds transfer to agree to be liable for consequential damages, the liability of a Federal Reserve Bank under section 4A–404 (relating to obligation of beneficiary’s bank to pay and give notice to beneficiary), or the liability to parties governed by subpart C for claims not based on the handling of a payment order under subpart C.

(b) *Payment of compensation.* (1) Under Article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A–204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A–209 (relating to acceptance of payment order), 4A–210 (relating to rejection of payment order), 4A–304 (relating to duty of sender to report erroneously executed payment order), 4A–305 (relating to liability for late or improper execution or failure to execute a payment order), 4A–402 (relating to

obligation of sender to pay receiving bank), and 4A–404 (relating to obligation of beneficiary’s bank to pay and give notice to beneficiary).

(2) Section 210.47(b) requires Federal Reserve Banks to provide compensation through payment in the form of interest. Under section 4A–506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A–506(b), the amount of interest is based on the federal funds rate. Similarly, compensation in the form of interest will be paid to government senders, receiving banks, or beneficiaries described in § 210.40(d) if they are entitled to interest under subpart C. A Federal Reserve Bank may also, in its discretion, pay compensation in the form of interest directly to a remote party to a transfer through the FedNow Service that is entitled to interest, rather than providing compensation to its sender or receiving bank.

(3) If a sender or receiving bank that received a payment of compensation is not the party entitled to compensation under Article 4A, the sender or receiving bank must pass the benefit of the compensation payment made to it to the party that is entitled to compensation. The benefit may be passed on either in the form of a direct payment of interest or in the form of a compensating balance, if the party entitled to interest agrees to accept the other form of compensation. In the latter case, the value of the compensating balance must be at least equivalent to the value of the interest payment that otherwise would have been provided.

(c) *Nonwaiver of right of recovery.* Several sections of Article 4A allow a party to a funds transfer to make a claim pursuant to the applicable law of mistake and restitution. Nothing in subpart C of this part or any Operating Circular issued in accordance with subpart C of this part waives any such claim by a Federal Reserve Bank. A Federal Reserve Bank, however, may waive such a claim by express written agreement in order to settle litigation or for other purposes.

■ 13. Add Appendix A of part 210 to read as follows:

Appendix A of Part 210—Article 4A, Funds Transfers

Part 1—Subject Matter and Definitions
Section 4A–101. Short Title

This Article may be cited as Uniform Commercial Code—Funds Transfers.

Section 4A–102. Subject Matter

Except as otherwise provided in section 4A–108, this Article applies to funds transfers defined in section 4A–104.

Section 4A–103. Payment Order—Definitions

(a) In this Article:

(1) Payment order means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition to payment to the beneficiary other than time of payment.

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) Beneficiary means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) Receiving bank means the bank to which the sender's instruction is addressed.

(5) Sender means the person giving the instruction to the receiving bank.

(b) If an instruction complying with paragraph (a)(1) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

Section 4A-104. Funds Transfer—Definitions

In this Article:

(a) Funds transfer means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) Intermediary bank means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) Originator means the sender of the first payment order in a funds transfer.

(d) Originator's bank means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

Section 4A-105. Other Definitions

(a) In this Article:

(1) Authorized account means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) Bank means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) Customer means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) Funds-transfer business day of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) Funds-transfer system means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) Good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) Prove with respect to a fact means to meet the burden of establishing the fact (Section 1-201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance". . . . Sec. 4A-209

"Beneficiary". . . . Sec. 4A-103

"Beneficiary's bank". . . . Sec. 4A-103

"Executed". . . . Sec. 4A-301

"Execution date". . . . Sec. 4A-301

"Funds transfer". . . . Sec. 4A-104

"Funds-transfer system rule". . . . Sec. 4A-501

"Intermediary bank". . . . Sec. 4A-104

"Originator". . . . Sec. 4A-104

"Originator's bank". . . . Sec. 4A-104

"Payment by beneficiary's bank to beneficiary". . . . Sec. 4A-405

"Payment by originator to beneficiary". . . . Sec. 4A-406

"Payment by sender to receiving bank". . . . Sec. 4A-403

"Payment date". . . . Sec. 4A-401

"Payment order". . . . Sec. 4A-103

"Receiving bank". . . . Sec. 4A-103

"Security procedure". . . . Sec. 4A-201

"Sender". . . . Sec. 4A-103

(c) The following definitions in Article 4 apply to this Article:

"Clearing house". . . . Sec. 4-104

"Item". . . . Sec. 4-104

"Suspends payments". . . . Sec. 4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 4A-106. Time Payment Order is Received

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders.

Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or

after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

Section 4A-107. Federal Reserve Regulations and Operating Circulars

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

Section 4A-108. Relationship to Electronic Fund Transfer Act

(a) Except as provided in subsection (b), this Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693 *et seq.*) as amended from time to time.

(b) This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a) as amended from time to time.

(c) In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

Part 2—Issue and Acceptance of Payment Order

Section 4A-201. Security Procedure

Security procedure means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

Section 4A-202. Authorized and Verified Payment Orders

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the

customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term sender in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a) of this section, or it is effective as the order of the customer under subsection (b) of this section.

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in section 4A–203(a)(1), rights and obligations arising under this section or section 4A–203 may not be varied by agreement.

Section 4A–203. Unenforceability of Certain Verified Payment Orders

(a) If an accepted payment order is not, under section 4A–202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 4A–202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting

facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

Section 4A–204. Refund of Payment and Duty of Customer To Report With Respect To Unauthorized Payment Order

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 4A–202, or (ii) not enforceable, in whole or in part, against the customer under section 4A–203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in section 1–204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

Section 4A–205. Erroneous Payment Orders

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 4A–206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in this paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

Section 4A–206. Transmission of Payment Order Through Funds-Transfer or Other Communication System

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

Section 4A–207. Misdescription of Beneficiary

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not

determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Section 4A–208. Misdescription of Intermediary Bank or Beneficiary's Bank

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or

beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 4A–302(a)(1).

Section 4A–209. Acceptance of Payment Order

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank (i) pays the beneficiary as stated in section 4A–405(a) or 4A–405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) When the bank receives payment of the entire amount of the sender's order pursuant to section 4A–403(a)(1) or 4A–403(a)(2); or

(3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour

after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 4A–211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

Section 4A–210. Rejection of Payment Order

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 4A–211(d) or the day the sender receives

notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

Section 4A–211. Cancellation and Amendment of Payment Order

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no

person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2) of this section.

Section 4A–212. Liability and Duty of Receiving Bank Regarding Unaccepted Payment Order

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 4A–209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

Part 3—Execution of Sender's Payment Order by Receiving Bank

Section 4A–301. Execution and Execution Date

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) Execution date of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the

payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

Section 4A–302. Obligations of Receiving Bank in Execution of Payment Order

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to section 4A–209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an

amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

Section 4A–303. Erroneous Execution of Payment Order

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 4A–402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 4A–402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

Section 4A–304. Duty of Sender To Report Erroneously Executed Payment Order

If the sender of a payment order that is erroneously executed as stated in section 4A–303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 4A–402(d) for the period before the bank learns of the execution error. The bank is not entitled to

any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

Section 4A–305. Liability for Late or Improper Execution or Failure To Execute Payment Order

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 4A–302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of section 4A–302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) of this section may not be varied by agreement.

Part 4—Payment

Section 4A–401. Payment Date

Payment date of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

Section 4A–402. Obligation of Sender To Pay Receiving Bank

(a) This section is subject to sections 4A–205 and 4A–207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to section 4A–303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 4A–204 and 4A–304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 4A–302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d) of this section.

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in this subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

Section 4A–403. Payment by Sender To Receiving Bank

(a) Payment of the sender's obligation under section 4A–402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by paragraph (a) of this section, the time when payment of the sender's obligation under section 4A-402(b) or 4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

Section 4A-404. Obligation of Beneficiary's Bank To Pay and Give Notice to Beneficiary

(a) Subject to sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of

the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

Section 4A-405. Payment by Beneficiary's Bank To Beneficiary

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under section 4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in paragraphs (d) and (e) of this section, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfer made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds

transfer to the beneficiary occurs under section 4A-406.

(e) This paragraph applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations-multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under section 4A-406, and (iv) subject to section 4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under section 4A-402(c) because the funds transfer has not been completed.

Section 4A-406. Payment by Originator to Beneficiary; Discharge of Underlying Obligation

(a) Subject to sections 4A-211(e), 4A-405(d), and 4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order *40813 accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under paragraph (a) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under paragraph (b) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the

beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

Part 5—Miscellaneous Provisions

Section 4A–501. Variation by Agreement and Effect of Funds-Transfer System Rule

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) Funds-transfer system rule means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 4A–404(c), 4A–405(d), and 4A–507(c).

Section 4A–502. Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank

(a) As used in this section, creditor process means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a

manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owned by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

Section 4A–503. Injunction or Restraining Order With Respect to Funds Transfer

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

Section 4A–504. Order In Which Items and Payment Orders May Be Charged to Account; Order of Withdrawals From Account

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

Section 4A–505. Preclusion of Objection to Debit of Customer's Account

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

Section 4A–506. Rate of Interest

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is

payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

Section 4A–507. Choice of Law

(a) The following rules apply unless the affected parties otherwise agree or paragraph (c) of this section applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each subsection of paragraph (a) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under paragraph (b) of this section and a choice-of-law rule under

paragraph (c) of this section, the agreement under paragraph (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law

rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

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Implementation of the National Suicide Hotline Improvement Act of 2018

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission proposes to require covered text providers to support text messaging to 988, the 3-digit dialing code to reach the National Suicide Prevention Lifeline. We seek comment on this proposal and related issues, such as the text message formats that covered text providers must transmit to 988 and the timeframe for implementation.

DATES: Comments are due on or before July 12, 2021, and reply comments are due on or before August 10, 2021.

ADDRESSES: You may submit comments, identified by WC Docket No. 18–336, by any of the following methods:

- *Federal Communications Commission's Website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* 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 45 L Street NE, 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>.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0388, Michelle.Sclater@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further notice of proposed rulemaking (FNPRM) in WC Docket No. 18–336, adopted on April 22, 2021 and released on April 23, 2021. The full text of the document is available at <https://docs.fcc.gov/public/attachments/FCC-21-47A1.pdf>. To request materials in accessible formats for people with disabilities (e.g., braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART, etc.), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

I. Further Notice of Proposed Rulemaking

A. Text-to-988 Can Save Lives

1. In this FNPRM, we tentatively conclude that text-to-988 functionality will greatly improve consumer access to the National Suicide Prevention Lifeline (Lifeline), particularly for at-risk populations, and thereby save lives. We seek comment on this tentative conclusion, and on the benefits of text messaging as a means to facilitate access to the critical mental health resources offered by the Lifeline generally.

2. We tentatively conclude that ensuring that Americans in crisis can text 988 is likely to save lives. In the *988 notice of proposed rulemaking*, the Commission observed that “Americans, particularly younger Americans, increasingly rely on texting to communicate,” and sought comment on how to account for this fact in establishing 988 as a nationwide 3-digit code for the Lifeline. In response, numerous experts in mental health and other fields have submitted comments in this proceeding underscoring the importance of texting as a vital communications medium by which many individuals may wish to obtain crisis counseling. Further, many of these

commenters noted that texting is particularly important for “members of vulnerable communities such as young people, low-income individuals, members of the LGBTQ community, and individuals who are deaf and hard of hearing.” We seek comment on our tentative conclusion and the assertions of these commenters regarding the importance of texting as a means to access the lifesaving resources offered by the Lifeline.

3. Just as “Americans in crisis are in need of an easy-to-remember number to access the Lifeline’s potentially life-saving resources” by telephone, in our preliminary view Americans have a similarly strong need for an easy-to-remember number to reach the Lifeline by text. Because stakeholders will widely advertise 988 as the telephone number for the Lifeline, we preliminarily believe that providing text access at the same number will generate synergies that enhance the value of efforts to promote 988. Conversely, we fear that if text-to-988 is not available, Americans in crisis may be confused by efforts to promote 988 as the Lifeline’s telephone number and mistakenly believe that they can reach the Lifeline by texting 988, putting lives at risk. We seek comment on this preliminary analysis.

4. As the Commission noted in the *988 Report and Order*, young people are disproportionately at risk for mental health crises. They are also more likely to be most comfortable communicating via text. According to the National Alliance on Mental Illness, “[n]early 95% of teens have access to smart phones and say that texting is the primary way that they connect.” For this reason, the International Council for Helplines describes the increasing use of “chat and text services . . . for those who are in a mental health crisis,” pointing to a recent survey indicating that “75% of millennials prefer texting over talking.” According to Mental Health America, “[m]ultiple sources of data demonstrate youth prefer communicating by text rather than calls,” including a study finding that young people “were more likely to forgo psychological support than talk in person or over the phone.” As a result, Mental Health America argues, the “data strongly support[] the implementation of texting for providing resources to individuals experiencing suicidal ideation.” We seek comment on these views and whether adopting a text-to-988 mandate would provide particular benefits for young Americans. Are young people more inclined to seek help by text than by telephone, and if

so, would making it easier to text the Lifeline save lives?

5. In our preliminary view, facilitating Lifeline accessibility by text message to 988 is also likely to provide significant benefits to many other at-risk communities as well, further justifying our proposed mandate. As the Commission explained in the *988 Report and Order*, a broad range of American communities are disproportionately impacted by suicide, including Veterans, LGBTQ individuals, racial and ethnic minorities, and rural Americans. Many members of these affected communities may prefer to seek help through text messages. For example, Mental Health America reports that data they collect demonstrate that individuals “who identify as Black or African American are more likely to report that they would like to receive a phone number they can immediately call or text for help” than members of any other race or ethnicity. Do commenters agree with Mental Health America that making crisis counseling services available via text message “may mean the difference between accessing psychological support and forgoing it, especially among youth of color?” Is Mental Health America correct that easy access to crisis services via text may be the difference between seeking and forgoing help for such groups, and if so would use of a 3-digit dialing code for the Lifeline make a significant difference in widespread understanding that such crisis services are available?

6. Indeed, demographic evidence regarding usage of currently available non-governmental text and chat options indicate that texting is a particularly valuable means to obtain help, not only for young people, but also for many members of low income, minority, and other communities that are disproportionately impacted by mental health crises. Several commenters in this proceeding have pointed to the successes that private non-profit services like the Trevor Project have had in providing crisis counseling to at-risk communities through text messages, offering that their experiences demonstrate the need to provide text access to 988. In addition, as one commenter to the *988 notice of proposed rulemaking* argued, adding text access to 988 could allow the Lifeline and Veterans Crisis Line “to more efficiently route those in need to specialized services,” further leveraging the expertise of organizations like the Trevor Project, which provides mental health support and counseling specific to the needs of LGBTQ youth. We preliminarily agree with this assessment and believe that establishing text access

to 988 will complement the important work already being done by these and other private sector organizations, and further facilitate access to the lifesaving resources offered by the Lifeline and Veterans Crisis Line. We seek comment on these views and on the benefits of text-to-988 for at-risk groups. Are there additional at-risk communities that may benefit from texting as an option to access the Lifeline?

7. Likewise, we preliminarily believe that our tentative conclusion is further justified because implementing text-to-988 capability will provide substantial benefits for individuals with disabilities who uniquely rely on text-based media to communicate. As the Communications Equality Advocates and others note, texting is an indispensable means of communication for individuals with disabilities. These individuals have increasingly adopted widely available text messaging platforms such as those offered by CMRS providers and interconnected text messaging services in lieu of specialized legacy devices. Further, texting may be the only means for such individuals to contact 988 directly and efficiently. Access to telecommunications for individuals with disabilities is a longstanding Commission priority and statutory obligation, and facilitating access to 988 for deaf and hard of hearing individuals is a particularly important policy objective in light of studies finding a significantly increased risk of suicide among deaf and hard of hearing people when compared to those without hearing loss. We seek comment on these views and whether our proposal would ease access to lifesaving counseling for individuals with disabilities. Do commenters agree with the Communications Equality Advocates that the ability for individuals normally using text for the bulk of their communications, including people with disabilities, to access trained mental health professionals using text-to-988 will be of “paramount importance”? Currently, how do people with disabilities reach the Lifeline? How would texting grant access or enhance their ability to communicate with the Lifeline? We seek comment on whether texting would be more accessible than the options currently available, including the Lifeline’s online chat portal.

8. We tentatively conclude that the potential lifesaving benefits of expanding access to suicide prevention and mental health crisis services for all Americans—and particularly the at-risk groups discussed above—justifies a text-to-988 mandate, and we seek comment

on this view. The Commission’s designation of 988 as the 3-digit telephone number for the Lifeline reflected its expectation that a simple, easy-to-remember, 3-digit dialing code for suicide prevention and mental health crisis counseling would “help increase the effectiveness of suicide prevention efforts, ease access to crisis services, reduce the stigma surrounding suicide and mental health conditions, and ultimately save lives.” We preliminarily believe that establishing text access to 988 will further advance these important objectives by providing mental health crisis counseling through a nationally available, easy-to-remember number that Americans will also associate with the telephonic Lifeline. Do commenters agree with the Communications Equality Advocates that individuals in crisis “are likely to first use their preferred, familiar mode of communication to reach out for help?” We seek comment on this analysis, and on our proposed conclusion that a text-to-988 mandate is likely to offer substantial, lifesaving benefits to all Americans affected by mental health crises, particularly for many members of at-risk communities. Is a text-to-988 mandate likely to have a significant impact on the likelihood of Americans considering suicide or in a mental health crisis to contact the Lifeline? Would mandating text-to-988 amplify the benefits of promoting 988 as the telephone number for the Lifeline? What are the costs or drawbacks to our proposal?

9. In our preliminary view, the Lifeline’s soft launch of a texting capability is a significant changed circumstance that supports mandating text-to-988. When the Commission adopted the *988 Report and Order*, the Lifeline was not capable of receiving or responding to text messages. The Commission, stating that it has no authority to require the Lifeline to develop texting capability, deferred “consideration of mandating text-to-988 at this time so that we could revisit the issue promptly should the Lifeline develop integrated texting.” Now, the Lifeline is capable of responding to texts sent to the Lifeline. The Lifeline’s ability to respond to texts significantly strengthens the case for imposing a text-to-988 mandate on providers. We seek comment on this evaluation.

10. We preliminarily expect many of the same lifesaving benefits from texting to 911 to accrue from texting to 988. In its comments in support of adopting a text-to-988 requirement, CTIA notes that text-to-911 functionality “has saved countless lives and enabled public safety to keep pace with the modern

communications preferences of consumers.” Given the parallels between the Commission’s efforts to promote text access to 911 and our proposals in this FNPRM, are there lessons learned in the context of establishing text-to-911 capability that would be instructive here? CTIA states that there are “significant technical and policy differences between the national 9–8–8 service that will be administered by the Lifeline and the local 9–1–1 services that are administered by thousands of PSAPs.” For example, unlike calls to 911, which carriers route to one of thousands of local PSAPs across the country based on the caller’s geographic location, all calls to 988 are routed to a central toll free number, and are then directed within the Lifeline network to a local crisis center. How might these or other differences between the 911 and 988 networks affect our proposal to adopt a text-to-988 requirement?

B. Proposed Implementation of Text-to-988

1. Scope of Text-to-988 Requirement

11. *Text Formats.* We seek comment on an appropriate scope of text messages that covered text providers must transmit to 988. At present, the Lifeline is capable of receiving text messages sent to the existing 10-digit number in “short message service” (SMS) format. The Commission’s Truth in Caller ID rules define the term ‘short message service’ or SMS as “a wireless messaging service that enables users to send and receive short text messages, typically 160 characters or fewer, to or from mobile phones and can support a host of applications.” We recognize, however, that our federal partners may incorporate additional capabilities for receiving and responding to text messages in the future. We seek to adopt a forward-looking, flexible scope that can expand with the capabilities of the Lifeline without unnecessarily burdening covered text providers by requiring support of formats that the Lifeline is not yet capable of receiving. To that end, we propose (1) establishing a definition that sets the outer bound of text messages sent to 988 that covered text providers may be required to support; and (2) directing the Wireline Competition Bureau (Bureau) to identify text formats within the scope of that definition that the Lifeline can receive and thus covered text providers must support by routing to the 10-digit Lifeline number. We seek comment on this proposal in detail below.

12. First, we propose to define the outer bound of text messages that

covered text providers may be required to transmit to 988 based on the definition of “text message” that Congress enacted in 2018 in the context of Truth in Caller ID requirements:

The term “text message” (i) means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code; (ii) includes a [SMS] message and a multimedia message service (commonly referred to as ‘MMS’) message; and (iii) does not include—(I) a real-time, two-way voice or video communication; or (II) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in clause (ii).

The Commission’s Truth in Caller ID rules define MMS as “a wireless messaging service that is an extension of the SMS protocol and can deliver a variety of media, and enables users to send pictures, videos, and attachments over wireless messaging channels.” We seek comment on this proposed scope. We believe this definition has several advantages—it incorporates multimedia messages; it is not limited to specific technologies; and it reflects a recent determination by Congress, albeit in a different policy context. For the purpose of our text-to-988 rules, we propose adding “or 988” to the phrase “10-digit telephone number or N11 service code” so that text messages from the Lifeline identified by the 3-digit code 988 are included within the scope of covered text providers’ obligations, and we seek comment on this proposal. We seek comment on whether using the Truth in Caller ID definition appropriately sets an outer bound that would achieve our goals of adopting a forward-looking, flexible scope that can expand with the capabilities of the Lifeline without unnecessarily burdening covered text providers.

13. We note that the Truth in Caller ID statutory definition of “text message” excludes “real-time, two-way voice or video communications,” as well as “messages sent over . . . IP-enabled messaging services to another user of the same messaging service.” If we adopt the Truth in Caller ID definition, we seek comment on how we should interpret each of these two exclusions here. Is there any reason to adopt a different interpretation of the relevant exclusions in this context compared to the Truth in Caller ID context? Would adopting the Truth in Caller ID definition of “text message,” with the exclusions specified above, prevent us from possibly adding “next-generation” text messages to our requirements in the future?

14. We also seek comment on alternative outer scopes of required texts. For instance, should we adopt the scope of our text-to-911 rules, which require providers to route “a message, consisting of text characters, sent to the short code ‘911’ and intended to be delivered to a PSAP by a covered text provider, regardless of the text messaging platform used”? In the *Text-to-911 Second Report and Order*, the Commission identified SMS and MMS messages as examples of text messages included within the scope of this proposed rule. We seek comment on whether the Truth in Caller ID definition, the text-to-911 definition, or another definition offers the best model here. We note that the Truth in Caller ID model is newer than the text-to-911 definition, originates with Congress rather than the Commission, and unlike the text-to-911 definition explicitly includes images, sounds, and other non-textual information. On the other hand, the Commission developed the text-to-911 definition in a more analogous policy context than the Truth in Caller ID definition. Do these or other considerations suggest that one or the other model is superior?

15. Should we ensure that any definition we adopt encompasses next-generation forms of text messaging, such as MMS, Rich Communications Services (RCS), and/or real-time text (RTT), and what modifications—if any—would we need to make to the definitions we are considering to ensure that such forms are within our proposed scope? RCS has been described as a “successor protocol” to SMS, or as “next-generation” SMS. What are the fundamental differences between SMS, MMS, and RCS? How would the costs to implement SMS, MMS, and RCS differ? The Commission has previously concluded that “messages sent over other IP-enabled messaging services that are not SMS or MMS—such as [RCS]—are excluded from” the Truth in Caller ID definition of text message “to the extent such messages are sent to other users of the same messaging service.” Would it be necessary to modify the Truth in Caller ID definition for our purposes to ensure that it includes RCS or other next-generation services?

16. We also seek comment on whether we should ensure that our proposed outer bound definition of text message encompasses RTT. Telecommunications for the Deaf and Hard of Hearing, Inc., et al. have urged us to mandate the ability to reach 988 by RTT, noting that the Commission “has acknowledged the benefits of RTT in crisis situations such as ‘allow[ing] for interruption and reduc[ing] the risk of crossed messages

because the . . . call taker is able to read the caller's message as it is being typed, rather than waiting until the caller presses the 'send' key." We seek comment on this assertion and other potential benefits and drawbacks of RTT to 988. We note that pursuant to the *2016 RTT Order*, all wireless service providers are permitted to support RTT on their IP networks for purposes of 911 compliance (and for purposes of complying with the general accessibility requirements of Parts 6, 7, and 14 of the Commission's rules) as an alternative to supporting TTY communications over IP. In light of the deployment of such RTT capabilities in wireless IP networks, are there any impediments to wireless service providers routing RTT texts to the 988 number, in the event that Lifeline chooses to support RTT? Do newer text messaging protocols like RTT and RCS represent a significant portion of the text messaging ecosystem, or are they likely to in the near future? Are consumers likely to expect the ability to use these kinds of platforms to send text messages to 988? Do these texting solutions make texting more accessible for individuals with disabilities? Are there other reasons to include, or exclude, these types of applications from our definition? Are there any text message formats that we should specifically exclude from the definition we adopt? For example, in crafting the text-to-911 rules, the Commission chose to exclude from its requirements a variety of services, including "relay service . . . , mobile satellite service (MSS), and in-flight text messaging services," as well as "text messages that originate from Wi-Fi only locations or that are transmitted from devices that cannot access the CMRS network." Should we adopt any similar exclusions here?

17. Second, we seek comment on how to structure our delegation to the Bureau to ensure that covered text providers support formats within the scope of the definition we adopt that the Lifeline can receive. We propose, as an initial matter, requiring covered text providers to support transmission of SMS messages to 988, since that is what the Lifeline can presently receive. We further propose directing the Bureau, after consultation with our federal partners at SAMHSA and the VA, to issue a Public Notice no less frequently than annually proposing and seeking comment on requiring covered text providers to transmit any new message formats to 988 that the Lifeline can receive and that are within the scope of the definition we adopt. If the Bureau proposes requiring implementation of a

new message format, we further propose directing the Bureau, after notice and comment, to issue a second Public Notice, requiring covered text providers to transmit the new message format to 988 by a fixed deadline that we specify unless the record demonstrates that implementation is not technically feasible. We seek comment on this proposal. Does it appropriately balance the need for expedient implementation with avoiding unduly burdening covered text providers with implementing formats that the Lifeline cannot receive? Should we require the Bureau to issue a Public Notice more or less often than annually? Or is there another mechanism, such as one similar to the Commission's Text-to-911 PSAP registry, whereby PSAPs issue a valid request for texting service from covered text providers, that we should consider? Is technical feasibility an appropriate standard for exclusion, or do commenters recommend a different standard? Should we have a standard for exclusion by the Bureau at all? If we do not have a standard for excluding certain technologies, is notice and comment necessary? What is an appropriate implementation deadline for us to specify after the Bureau issues its Public Notice requiring implementation? For instance, would six months be sufficient? Should we instead allow the Bureau flexibility to set an appropriate deadline? Should we provide any further direction to the Bureau regarding the evaluation we propose to require?

18. We also seek comment on structuring the scope of covered text messages differently. For instance, should we simply adopt a definition of "text message" and require covered text providers to support all such formats, regardless of whether the Lifeline can support that format presently? Should we adopt a narrower definition of "text message" that conforms to what the Lifeline can support at present? While we appreciate the simplicity of either of these approaches compared to our proposal, how would commenters address our concern that the former is unnecessarily burdensome, and the latter is not adequately future-proofed?

19. *Covered Text Providers.* We propose to apply our text-to-988 requirement to "covered text providers" as that term is defined in the text-to-911 rules, to "include[] all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications

downloaded or otherwise installed on mobile phones." We note that the term "covered text provider" used in this *notice of proposed rulemaking* differs from the term "covered providers" used in the rules the Commission adopted in the *988 Order*, which refers to all telecommunications carriers, interconnected VoIP providers, and one-way VoIP providers. We seek comment on this proposal, and on any alternative approaches to the scope of entities that must establish text-to-988 transmission capability. For example, if we can apply the definition of "text message" in the Truth in Caller ID rules to texting to 988, should we apply our text-to-988 rules to providers of "text messaging services," as defined in section 227 of the Act and our Truth in Caller ID rules? In that context, we define "text messaging service" as "a service that enables the transmission or receipt of a text message." Is the Truth in Caller ID model preferable, for instance because it may incorporate a broader range of providers that support text messaging service, or is our proposal preferable, for instance because it is more specific? We also seek comment on other possible models and scopes of covered providers. Would using "CMRS providers" exclude services over certain spectrum bands or non-switched wireless services that transmit text messages to 988, and should we instead include "wireless carriers," or a different term, in our definition of "covered text providers?"

20. *Interconnected Text Messaging Services.* In adopting the text-to-911 rules, the Commission observed that there are a variety of widely available text messaging services and platforms with different technological capabilities, including SMS, MMS, and "over-the-top" (OTT) applications delivered over internet protocol (IP)-based mobile data networks. As the Commission explained in the *Text-to-911 Second Report and Order*, "SMS requires use of an underlying carrier's SMS Center (SMSC) to send and receive messages from other users" while "[MMS]-based messaging makes use of the SMSC but also involves the use of different functional elements to enable transport of the message over IP networks." A third category, OTT applications, may be offered by CMRS providers or third parties and allow consumers "to send text messages using SMS, MMS or directly via IP over a data connection to dedicated messaging servers and gateways." These OTT services, which are often downloaded through mobile app stores, are increasingly popular with consumers and may be interconnected with the publicly

switched telephone network (PSTN) or not. For purposes of the Commission's text-to-911 rules, interconnected text messaging applications enable consumers to "send text messages to all or substantially all text-capable U.S. telephone numbers and receive text messages from the same," while non-interconnected applications "only support communication with a defined set of users of compatible applications but do not support general communication with text-capable telephone numbers." The Commission's text-to-911 rules include interconnected text messaging services but exclude non-interconnected applications because they do not provide the ability to communicate with text-capable U.S. telephone numbers.

21. As in the text-to-911 rules, we propose to apply our text-to-988 requirements to interconnected text messaging services, thereby excluding non-interconnected applications from the requirements. We seek comment on this approach. This approach is also analogous to the Commission's decision in the *988 Report and Order* to apply to "providers that access the [PSTN] on an interconnected basis to reach all Americans" and any "providers that access the [PSTN] on an interconnected basis to reach all Americans." We note that the Commission's Truth in Caller ID rules provide an exemption for messages "sent over an IP-enabled messaging service to another user of the same messaging service, except [for an SMS or MMS message]," which similarly operates to exclude non-interconnected text messaging services. Since the services provided by the Lifeline require two-way communication and, by definition, non-interconnected text messaging applications cannot support two-way texting with "all or substantially all text-capable U.S. telephone numbers," we believe it is unlikely that these services would be technically capable of supporting text-to-988 functionality. We seek comment on this view. Are there any tools available to the Commission to mitigate the potential for consumer confusion regarding the availability of text-to-988 across different text messaging platforms and technologies, particularly with respect to non-interconnected text messaging applications?

2. Routing Texts to 988

22. We propose to require that covered text providers route covered 988 text messages to the Lifeline's current 10-digit number, 1-800-273-8255 (TALK), and we seek comment on this proposal. This proposal is

consistent with the Commission's decision for routing calls to 988 in the *988 Report and Order*. In the *988 Report and Order*, the Commission required "that service providers transmit all calls initiated by an end user dialing 988 to the current toll free access number for the Lifeline," finding that a centralized routing solution will allow for faster implementation of the 988 3-digit dialing code, lower costs to maintain 988 routing, and provide continued easy access to Lifeline by callers with disabilities. We preliminarily believe that there are similar benefits to routing texts to 988 to a single, centralized number and seek comment on this view.

23. There is support in the record thus far for routing to the Lifeline. CTIA supports directing texts sent to 988 to the Lifeline as a "central point for receiving such communications," consistent with the Commission's mandate for routing 988 voice calls. Vibrant Emotional Health, the administrator of the Lifeline, argues in support of text-to-988 functionality integrated into the current Lifeline structure for routing voice and chat services, with oversight squarely within the role of the Lifeline's administrator. We seek comment on these assessments.

24. We anticipate that requiring covered text providers to route to a single destination provides SAMHSA and the VA with flexibility to develop their own routing solutions among the local crisis centers, including adding new crisis centers in the future, as compared to requiring covered text providers to implement additional updates or routing changes as more centers are added. Callers to 1-800-273-8255 (TALK) can reach the Veterans Crisis Line by pressing option 1 to connect with one of three linked call centers in New York, Georgia, or Kansas. For other calls, calls to the Lifeline from anywhere in the United States are routed to the closest certified local crisis center according to the caller's area code or, should the closest center be overwhelmed by call volume, experience a disruption of service, or if the call is placed from part of a state not covered by Lifeline's network, the system automatically routes calls to a backup center. We seek comment on this preliminary analysis. Do the current obligations to route voice calls to 988 to the Lifeline 10-digit number offer any opportunities for streamlining implementation or reducing costs associated with routing texts to 988 to the same number?

25. In the alternative, we seek comment on whether instead to follow a model more comparable to the text-to-911 architecture, whereby covered text

providers route directly to a PSAP by requiring routing directly to a Lifeline local crisis center or to a Veterans Crisis Line crisis center. We anticipate that this approach would be significantly more costly than centralized routing and seek comment on this preliminary view. Is it easier to route texts to a single number than to individual crisis centers? As the Veterans Crisis Line is not currently set up for geographic distribution, would this architecture be appropriate for messages by Veterans or Service Members? Are covered text providers able to leverage existing text-to-911 systems to reduce costs if required to route texts to 988 directly to local crisis centers? In the *988 Report and Order*, the Commission recognized that some commenters expressed there may be benefits to routing voice calls to individual crisis centers, such as familiarity with a caller's area and potentially easier coordination with local emergency services, but ultimately concluded that the advantages associated with routing to a single number outweighed the benefits of localized routing. Does that rationale apply here? Are there benefits to routing texts to the individual crisis centers that are unique to text messages, such as providing localized support to the public in the vicinity of the crisis center? What are the costs or drawbacks to covered text providers to route texts to the Lifeline 10-digit number versus the local crisis centers? Which approach will lead to speedier implementation, and how should that impact our analysis? Is there another alternative approach, other than centralized routing or routing by crisis center, that we should consider?

26. Currently, Veterans and Service Members may dial the Lifeline to reach the Veterans Crisis Line via voice call, but the Lifeline texting service and the VA's short code texting service require contacting separate numbers. How should we account for this distinction in evaluating what rules to adopt to ensure that Veterans, Service Members, and their families are able to reach the Veterans Crisis Line directly and promptly? We seek comment on whether and how we can act to facilitate integration of the Veterans Crisis Line's separate short code-based texting service into text-to-988 routing. Are there specific actions that the Commission should take to allow users to text 988 and reach both the Lifeline and Veteran-specific assistance? For instance, should we require covered text providers to provide an automated inquiry as to whether the texter is a Veteran or Service Member and route

the text to either the existing Lifeline number or the existing short code for Veterans depending on the response? Alternatively, would it be feasible to immediately prompt individuals texting to 988 to reply with the number “1” or “Vet” to be routed to the Veterans Crisis Line, similar to the experience for voice callers? Are other prompts preferable? We seek comment on possible solutions to ensure that texts are routed to the proper counseling services via the Lifeline or the Veterans Crisis Line, including input on technical feasibility, ways to minimize consumer confusion, and implementation costs. Should other text or chat services be integrated into 988 text routing, and if so, how?

27. We seek comment on whether we should require covered text providers to enable text-to-988 messages to include location information. As required by the National Suicide Hotline Designation Act of 2020, the Bureau will report to Congress on the costs and feasibility of providing location information with 988 calls on April 17, 2021. In our preliminary view, given that we have not adopted a location mandate in the context of calls to 988, we believe it would be premature to adopt a mandate here, and we seek comment on this view. Does someone who sends a text message to 988 expect that their location will be transmitted to the Lifeline? If consumers generally are aware that calls and texts to 911 include their location, would the same expectation apply to texts to 988? Would including location information deter at-risk individuals from texting to 988? We seek comment on any complications inherent in this plan and on ways for covered text providers to work with SAMHSA and the VA to limit misrouting of texts.

3. Implementation Timeframe for Text-to-988

28. *Uniform Nationwide Deadline.* We seek comment on an appropriate implementation timeframe for requiring covered text providers to support texting to 988 on a nationwide basis. We preliminarily propose adopting a uniform nationwide deadline for implementation for all covered text providers and for all covered 988 text messages, as determined by the Bureau. In the *988 Report and Order*, the Commission determined that the “rollout of 988 will be most effective if [it] set a single implementation deadline so that stakeholders can clearly and consistently communicate to the American public when 988 will be universally available.” We preliminarily believe that the same holds true here, and we seek comment on this view. Are there other benefits to a uniform

nationwide implementation deadline? What drawbacks, if any, exist?

29. Although we propose adopting a uniform nationwide deadline, we seek comment on whether we should adopt any extensions or exemptions for certain classes of providers or categories of text messages. Should we adopt any extensions or exemptions for smaller, rural, or regional covered text providers? If so, under what circumstances would such exemptions be appropriate? Are there unique technical considerations that necessitate different implementation timelines for certain covered text providers? If so, what are they and why? Are there any other considerations, such as any existing contractual obligations between our federal partners and other entities, that we should take into account in setting a deadline or deadlines?

30. *Appropriate Deadline.* We observe that CTIA and other commenters have previously argued that the Commission should not mandate text-to-988 before the Lifeline is capable of receiving and responding to texts, in part because the Lifeline’s readiness to receive and respond to text messages is crucial to implementing text-to-988 successfully. We seek comment on this assertion. We also seek comment on CTIA’s proposal to require covered text providers to “deliver text-to-988 to the Lifeline by July 16, 2022, or six months after the Lifeline demonstrates its readiness to accept text messages, whichever is later.” Is the Lifeline’s pilot program sufficient to demonstrate that it is ready to accept text messages? If not, how should we determine that the Lifeline has demonstrated readiness to accept text messages, both from a technical and operational standpoint? How should we take into account the capabilities of the Veterans Crisis Line in establishing a deadline? Understanding that the Lifeline and Veterans Crisis Line successfully accepting and responding to text messages to 988 will require coordination between several stakeholders, we emphasize that the Commission will continue to coordinate closely with our federal partners, SAMHSA and the VA, in their efforts to enable crisis centers to respond to text messages to 988 and establish a reasonable implementation timeframe for text-to-988. We reiterate that the Commission does not wish to determine for SAMHSA how it allocates the Lifeline’s resources, nor do we have the authority to require the Lifeline and its crisis centers to be capable of receiving and responding to text messages to 988.

31. We seek comment on whether the Commission should require all covered text providers to support text-to-988 by

July 16, 2022, the same implementation deadline for telecommunications carriers, interconnected VoIP providers, and one-way VoIP providers to support voice calls to 988. Is this technically, economically and operationally feasible? Are there benefits to requiring a uniform implementation timeline for all voice and text communications to 988? We observe that some covered text providers have already implemented voice calling to 988. For those providers, will requiring covered text providers to implement text-to-988 on the same timeline as voice calling to 988 create any efficiencies, such as reducing fixed costs? Is there an expectation that once 988 is deployed nationwide for voice communications that texting to 988 will be similarly available? Will a uniform implementation deadline discourage covered text providers from potentially supporting text to 988 before July 16, 2022? Are there other potential benefits or drawbacks to uniform implementation deadlines for providers supporting voice calling and texting to 988?

32. Alternatively, we seek comment on whether we should separate the timeline for implementing text-to-988 from the implementation timeline for voice-to-988. Is a phased-in approach preferable? Would it be beneficial to consider balance of telecommunications activation needs and organizational response needs by SAMHSA and the VA? Would it be less burdensome on providers working to implement 988 for voice calls in accordance with the *988 Report and Order*? Would a phased-in implementation timeline create consumer confusion regarding the availability of texting to 988? If phased-in implementation deadlines would create consumer confusion, would requiring certain covered text providers to implement text-to-988 more quickly minimize consumer confusion? For example, if a covered text provider has already implemented voice calling to 988 and is advertising the availability of 988 to its customers, should the provider be required to implement text-to-988 before other covered text providers? Are there other risks associated with a phased-in approach to an implementation timeline for voice and text communications to 988 as compared to uniform implementation timeline? What, if any, phased-in deadlines should the Commission consider?

33. We also seek comment on whether we should we adopt the same timeline for all covered text providers, regardless of the text messaging technology they use. Are there other preparedness concerns that we should take into

consideration when determining an implementation timeframe?

4. Technical Considerations

34. We seek comment on the specific technical considerations for covered text providers and equipment and software vendors—including those providers who are rural or small businesses—necessary to implement text-to-988. We propose to allow covered text providers to use any reliable method or methods (e.g., mobile-switched, IP-based) to support text routing and transmission to 988, similar to text-to-911 implementation. We seek comment on this proposal.

35. *Network Upgrades.* We seek comment on possible upgrades covered text providers would have to make to their networks to support text-to-988 capability. Since we propose to allow covered text providers to use any reliable method or methods to support text routing and delivery to 988, are any necessary network hardware or software upgrades small in scope? What specific components would require upgrading? Can the current solutions to enable text-to-911 capability be leveraged to support text-to-988, or are the implementation options for covered text providers to support text-to-988 significantly different? CTIA notes “there are significant technical and policy differences between national 9–8–8 service that will be administered by the Lifeline and the local 9–1–1 services that are administered by thousands of PSAPs.” We seek comment on CTIA’s view, especially with regard to any “significant” technical differences. Conversely, do commenters agree with Communications Equality Advocates that the costs to covered text providers for implementation of text-to-988 should be substantially lower than those associated with implementing text-to-911? We seek further comment on the potential integration of text-to-988 solutions with existing systems, as well as other network considerations specific to covered text providers to support text-to-988.

36. We also seek comment on whether there are unique network considerations for different text messaging service technologies within the proposed outer bound scope of text-to-988 service that impact implementation. CTIA comments that its member companies are “optimistic about the technical feasibility of supporting text-to-988,” provided that implementation is consistent with existing capabilities of native SMS messaging. Do commenters agree? Are there fewer network upgrades necessary to support SMS-only texts to 988? What specific network

upgrades would be required should we obligate covered text providers to support other text messaging formats, such as MMS, RTT, or RCS? Given that the Commission has recognized MMS as “an extension of the SMS protocol,” would support for MMS messaging be comparably feasible to support for SMS? How does the evolution of texting services to new or future formats affect network upgrade options and implementation, and how should our rules account for such evolution? Would requiring support for certain text messaging formats be more feasible for covered text providers to implement than others?

37. We specifically seek comment on the technical implementation capability and network upgrades necessary for interconnected text messaging service providers. Similar to the Commission’s conclusion in the *Text-to-911* proceeding, we anticipate that many interconnected text messaging service providers may choose to use a CMRS network-based solution to deliver texts to 988 and seek comment on this expectation. Have there been developments in text-to-911 delivery by interconnected text messaging service providers that such providers can use in text-to-988 implementation? In the text-to-911 context, the Commission’s rules state:

To the extent that CMRS providers offer Short Message Service (SMS), they shall allow access by any other covered text provider to the capabilities necessary for transmission of 911 text messages originating on such other covered text providers’ application services. Covered text providers using the CMRS network to deliver 911 text messages must clearly inform consumers that, absent an SMS plan with the consumer’s underlying CMRS provider, the covered text provider may be unable to deliver 911 text messages. CMRS providers may migrate to other technologies and need not retain SMS networks solely for other covered text providers’ 911 use, but must notify the affected covered text providers not less than 90 days before the migration is to occur.

We seek comment on adopting this or a comparable requirement here. We recognize that text-to-911 network integration is necessary to facilitate a CMRS network-based solution, and we seek comment on whether the same integration is necessary for transmission of text-to-988 communications by other covered text providers using that solution. We seek comment on the relationship between CMRS providers and interconnected text messaging service providers to maintain support and capability for text-to-988 service based on the technical solutions available. We emphasize that, as in the

text-to-911 proceeding, even if we were to adopt a rule comparable to the text-to-911 rule above, we do not intend to establish an open-ended obligation for CMRS providers to maintain underlying SMS network support merely for the use of other providers. Further, similar to the Commission’s position in the *Text-to-911 Second Report and Order*, if we adopt a rule comparable to the text-to-911 rule above, we propose concluding that it is the responsibility of the covered text provider using the CMRS-based solution to ensure that its text messaging service is technically compatible with the CMRS providers’ SMS-based network and devices, and in conformance with any applicable technical standards. We seek comment on this proposal. Finally, as in the text-to-911 context, if we adopt a rule comparable to the text-to-911 rule above, we propose requiring CMRS providers to make any necessary specifications for accessing their SMS networks available to other covered text providers upon request, and to inform such covered text providers in advance of any changes to these specifications. We seek comment on this proposal.

38. We also seek comment on specific technical considerations for covered text providers that are rural or regional providers, or small businesses. Are there unique impediments or challenges to implementation that these types of providers face that warrant further consideration?

39. *Equipment Upgrades.* We seek comment on possible equipment or software upgrades required for covered text providers to implement text-to-988. What challenges will equipment (e.g., handsets, network infrastructure) and software vendors face with respect to the implementation and deployment of text-to-988? For example, are upgrades required for operating systems, firmware, or other software on mobile devices to support text-to-988 capability? Are there upgrades necessary by vendors that are beyond the covered text providers’ control that require additional coordination? Will new standards need to be defined to ensure interoperability?

40. In the *Text-to-911* proceeding, the Commission clarified that legacy devices that are incapable of sending texts via 3-digit codes are not subject to the text-to-911 requirements, provided the software for these devices cannot be upgraded over the air to allow text-to-911. If the device’s text messaging software can be upgraded over the air to support a text to 911, however, then the Commission required the covered text provider to make the necessary software upgrade available. Should we include a

similar exemption for legacy devices under any text-to-988 requirements we may adopt? Have circumstances changed in the past seven years such that we should adopt a different approach here?

5. Cost Recovery

41. Consistent with the Commission's decision in the *988 Report and Order*, we propose to require that all covered text providers bear their own costs to implement text-to-988 capability to the Lifeline 10-digit number. As with call routing to 988, we do not anticipate any shared industry costs are necessary to implement text-to-988, in contrast to previous non-988 numbering proceedings where the Commission established a cost recovery mechanism. As proposed, costs to support text-to-988 would be borne by each provider, specific to the solutions each has adopted to route texts to 988 ultimately to the Lifeline's current toll free access number, presently 1-800-273-8255 (TALK). We seek comment on this proposal.

42. We believe this approach promotes efficiency in implementation and avoids unnecessary administrative costs. Section 251(e)(2) of the Act states that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis." The Commission typically applies cost recovery mechanisms in situations involving some type of numbering administration arrangement, such as when the Commission hires a third party to develop a database for industry use, to ensure that the statutory cost neutrality requirements are met. Here, as with implementation of voice calls to 988, circumstances do not require establishment of a numbering administration arrangement as there will not be shared costs. Therefore, we believe the section 251(e)(2) requirements do not apply. Furthermore, even if section 251(e)(2) applies, we believe it is satisfied if we require each provider to bear its own costs because each provider's costs will be proportional to the size and quality of its network. We seek comment on this analysis.

6. Bounce-Back Messages

43. We seek comment on whether and in what circumstances to require covered text providers to send automatic bounce-back messages where text-to-988 service is unavailable. Throughout the ongoing roll-out of text-to-911 services across the U.S., the

Commission has required covered text providers to send an automatic reply, or bounce-back, text message when a consumer attempts to send a text message to a PSAP by means of the 3-digit code "911" and the covered text provider cannot deliver the text because (1) the consumer is located in an area where text-to-911 is not available, or (2) the covered text provider either does not support text-to-911 generally or does not support it in the particular area at the time of the consumer's attempted text. Unlike in the text-to-911 context, where availability varies by geography and is based on whether the local PSAP can receive texts, our proposals herein would require covered text providers to support nationwide texting to the Lifeline via the 988 3-digit code on a uniform nationwide deadline. If we were to adopt our proposal, should we nonetheless require bounce-back messages? If so, when and under what circumstances? Should we require covered text providers to make available bounce-back messages sooner than we require implementation of text-to-988? Would requiring bounce-back messages be appropriate if we adopt a uniform nationwide deadline for text-to-988 capability later than July 16, 2022—the uniform nationwide deadline for covered providers to support calls to 988? Would requiring bounce-back messages be appropriate if we adopt exemptions or extensions for some providers?

44. We seek comment on the potential benefits and costs of a bounce-back requirement. In the text-to-911 context, the Commission determined that "there is a clear benefit and present need for persons who attempt to send emergency text messages to know immediately if their text cannot be delivered to the proper authorities," noting that feedback where text-to-911 is not available may be lifesaving by directing a person to seek out an alternative means of communicating with emergency services. Is that the case here as well? Because some individuals with disabilities may rely exclusively on texting for communicating, are there unique benefits of a bounce-back requirement for these individuals? Since the Commission designated 988 as the 3-digit dialing code to access the Lifeline, efforts have been underway to educate the public about using this 3-digit code to reach help by telephone in times of mental health crisis, including its availability for routing voice calls to the Lifeline by July 16, 2022. In the absence of a bounce-back, might such advertising confuse the public about the availability of texting to 988? Would an

automated bounce-back help to prevent such confusion? Are there other advantages to requiring covered text providers to send bounce-back messages for attempts to text 988 where service is unavailable? Are any providers included under the proposed "covered text providers" definition currently sending bounce-back messages to texts sent to 988?

45. What are the costs of requiring a bounce-back message? What work or upgrades would be necessary for text service providers to implement an automatic bounce-back reply? Given that covered text providers must provide a bounce-back in circumstances in which text-to-911 is unavailable, would adding a comparable bounce-back message for 988 be easier than if that existing infrastructure were not in place? Would requiring text service providers to build bounce-back capabilities deter resources from more rapid deployment of text-to-988?

46. We seek comment on how requiring bounce-back messages may impact the public's ability to seek help from the Lifeline in times of mental crisis. What are the potential benefits to receiving an automatic bounce-back message when text-to-988 service is unavailable? Are there any drawbacks to the public of requiring covered text providers to send bounce-back messages when text-to-988 is not available? One commenter contends that if at-risk texters receive a bounce-back message regarding the unavailability of services, "the risks of disengagement and adverse outcomes increase." Do commenters agree with the assessment that an automatic bounce-back message will negatively impact individuals seeking help during a crisis? Would a bounce-back message have the effect of making the sender more discouraged, such that it that could increase, not decrease, the likelihood of suicide? Alternatively, if there is no automatic reply, and the sender is left wondering whether the Lifeline received the text message, would that uncertainty also increase sender's likelihood of suicide? We seek comment on whether the benefits of receiving an automatic bounce-back message outweigh the potential risk of disengagement.

47. If we were to adopt a bounce-back requirement, we seek comment on the specific requirement we should adopt. To align with the scope of the proposed outer bound text-to-988 capability requirements, we propose that if we were to adopt a bounce-back requirement, we would require all covered text providers to provide automatic bounce-back messages to text messages, as defined by our outer bound

proposal herein, sent to 988 where text-to-988 service is unavailable. We seek comment on this approach. Are there unique considerations for different technologies within the outer bound scope of text message that we should consider under our bounce-back message proposal, including such impact on technical implementation or costs? Should we consider requiring covered text providers to send automatic bounce-back messages in reply to messages outside the scope of the outer bound definition? Are there additional text or chat service providers that offer services beyond the proposed outer bound definition that we should include within the scope of our proposed bounce-back requirement? Should we limit any bounce-back requirement to covered text providers, as proposed, or should the requirement sweep more broadly? CTIA asserts that text-to-988 implementation should be consistent with existing SMS capabilities. Should any bounce-back requirement we may explore likewise remain consistent with SMS? Is sending a bounce-back message in response to texts to 988 feasible on legacy SMS systems? We seek comment on the impact including other text or chat service providers, or other forms of messages, may have on the implementation costs, technical feasibility, and timeframe for our proposed bounce-back message requirements.

48. Should we adopt a bounce-back requirement, we seek comment on whether and how to expand on the circumstances in which a covered text provider must provide a bounce-back message due to unavailability of text-to-988. In the text-to-911 context, when a customer is roaming away from his or her "home network" (*i.e.*, the network of the customer's mobile carrier), the CMRS provider operating the customer's home network is nonetheless responsible for providing a bounce-back message when required; and the provider operating the network on which the customer is roaming must not impede the bounce-back response by the home network operator. We seek comment on adopting a similar requirement here. Additionally, we anticipate that there may be circumstances in which the Lifeline is unable to receive and respond to texts, including where demand may exceed its capacity to respond. In instances amounting essentially to a "busy signal" for text delivery, are covered text providers capable of determining that the text cannot be delivered to 988? Would covered text providers be able to

determine if a text to 988 is undeliverable due to the Lifeline's inability, whether temporary or sustained, to receive and respond to the texts? Or should we establish a mechanism whereby the Lifeline may inform providers of a temporary suspension of text-to-988 service, and should the bounce-back requirement apply until the suspension is lifted? Lastly, we seek comment on considerations, either within the control of the covered text provider or the Lifeline's administrators, in which a message from an individual in crisis attempting to reach 988 may not be delivered, and therefore may benefit from receipt of a bounce-back message directing the individual to contact 988 by alternative means. Are there additional circumstances where we should require covered text providers to send bounce-back messages in response to 988 texts?

49. If we were to adopt a bounce-back requirement, we propose to adopt the same exceptions to our bounce-back notification requirement for text-to-988 as currently exist for the Commission's text-to-911 rules. If we adopt that same approach, a covered text provider would not be required to provide an automatic bounce-back message when: (1) Transmission of the text message is not controlled by the provider; (2) a consumer is attempting to text 988, through a text messaging application that requires CMRS service, from a non-service initialized handset; (3) the text-to-988 message cannot be delivered due to a failure in the Lifeline's routing network that has not been reported to the provider; or (4) a consumer is attempting to text 988 through a device that is incapable of sending texts via 3-digit codes, provided that the software for the device cannot be upgraded over the air to allow text-to-988. We seek comment on this approach. Are there other situations where a covered text provider should not be required to send bounce-back messages to consumers attempting to text to 988? Furthermore, we seek comment on the circumstances in which the provider of a pre-installed or downloaded interconnected text application would be considered to have "control" over the transmission of text messages for the purposes of any requirements we adopt. If a user or third party modifies or manipulates the application after it is installed or downloaded so that it no longer supports bounce-back messaging, should the application provider be presumed not to have control?

50. If we adopt a bounce-back requirement, should we specify or provide guidance regarding the content

of the bounce-back message, and if so, what should we specify or encourage? Similar to automatic messages sent in response to undeliverable texts to 911, we propose that any bounce-back messages to consumers attempting to text 988 would not require all covered text providers to use identical wording for their automatic responses. Rather, if we were to adopt a bounce-back requirement, we propose that a covered text provider would be deemed to have met its obligation so long as the bounce-back message to 988 includes, at a minimum, two essential points of information: (1) That text-to-988 is not available; and (2) identify other means to reach the Lifeline, such as by telephone. We seek comment on this approach and on alternatives. We seek comment on what role our federal partners and non-governmental mental health organizations could play in developing best practices regarding the content of messages.

7. Role of the Substance Abuse and Mental Health Services Administration and the Department of Veterans Affairs

51. Although the Commission has an important role to play in expanding access to crisis counseling through its implementation of 988, SAMHSA and the VA are ultimately responsible for ensuring the continued success of these lifesaving resources. As such, we propose to direct the Bureau to continue to coordinate the implementation of 988 with SAMHSA and the VA, including any issues pertaining to the delivery of text messages to 988.

52. We seek comment on this proposal. How we can best support the work of our federal partners in administering the Lifeline and Veterans Crisis Line? We recognize that many commenters have stressed the importance of ensuring adequate funding and staffing for the Lifeline and the Veterans Crisis Line over the course of this proceeding. Although these issues are beyond our jurisdiction, are there unique considerations pertaining to staffing, funding, or the availability of other resources at the Lifeline or Veterans Crisis Line that we should be aware of as we consider adopting rules to require the delivery of text messages to 988? How should we account for the possibility that text-to-988 may be popular and increase demands on the Lifeline and Veterans Crisis Line? What resources will be needed for the Lifeline and Veterans Crisis Line to ensure that text-to-988 is a success? How should we account for our federal partners' budget cycles? We are cognizant of the potential burdens our proposals may impose upon our federal partners,

including personnel, equipment, and resource allocation, and we seek comment on the impact the possible implementation solutions may have on SAMHSA and the VA when supporting text-to-988 service. To that end, we intend to coordinate with SAMHSA and the VA, and we encourage other industry stakeholders in the wireless and texting service industry to coordinate with these agencies as well. Assuming that our adoption of rules implementing text-to-988 capability will require expenditure of additional resources by SAMHSA and the VA, are there ways that we can structure our rules to minimize the burden on our federal partners? Are there any steps we should take to deter misuse of text-to-988, so as to limit the unnecessary expenditure of resources by our federal partners? Are there any solutions that have been employed in other contexts, such as text-to-911, that we or others should adapt here to deter misuse of text-to-988?

53. In addition, we encourage SAMHSA and the VA to coordinate with outside organizations that have expertise in providing crisis counseling via text message as they develop the infrastructure to receive and respond to text messages which may one day be delivered to the Lifeline and Veterans Crisis Line via 988. Many commenters in this proceeding have urged collaboration between private entities like the Trevor Project and federal agencies providing similar services. We therefore seek comment on how to facilitate such coordination across federal agencies and the private sector, as we work towards our shared goal of ensuring that all Americans have ready access to mental health counseling and support services.

C. Legal Authority

54. We propose concluding that we have the authority to adopt the rules proposed and for which we seek comment in this further notice of proposed rulemaking under Title III of the Act and the Twenty-First Century Communications and Video Accessibility Act (CVAA). We seek comment on these and any other sources of authority available to us. In particular, we seek comment on whether, and if so, to what extent, our numbering authority under section 251(e) of the Act provides an additional source of authority for the rules proposed and for which we seek comment in this further notice of proposed rulemaking. Finally, we also seek comment on whether we should employ our ancillary authority. We note that, in our preliminary review, the

National Suicide Hotline Designation Act of 2020 does not provide additional support for—nor does it hinder—the actions proposed in this further notice of proposed rulemaking. We seek comment on these views.

55. The rules we propose and for which we seek comment in this further notice of proposed rulemaking are analogous to those the Commission has adopted to facilitate text-to-911 communications, which relied, in part, on the Commission's Title III authority over wireless carriers, including sections 301, 303, 307, 309, and 316. We propose concluding that, with respect to CMRS providers, Title III provides us with appropriate authority to require wireless carriers to support text-to-988 service and to require delivery of a bounce-back message to consumers in cases where delivery of a text to 988 cannot be completed. As the Supreme Court has long recognized, Title III grants the Commission a “comprehensive mandate” regarding regulation of spectrum usage, and courts have routinely found that Title III provides the Commission with “broad authority to manage spectrum . . . in the public interest.” As we explain, we believe the rules we propose in this further notice of proposed rulemaking are likely to have significant public interest benefits. And, the Commission has previously found that its Title III licensing authority supported adoption of a similar set of obligations in the text-to-911 context. Therefore, we believe that with respect to CMRS providers, Title III provides sufficient authority here. We note that, following the release of the *Text-to-911 Order*, the Commission released a Declaratory Ruling classifying SMS and MMS services as “information services” under the Act. However, as the Commission explicitly noted in the *Declaratory Ruling*, this determination “does not affect the general applicability of the spectrum allocation and licensing provisions of Title III and the Commission's rules” to SMS and MMS services, nor does it affect the specific application of sections 301, 303, 307, 309, and 316 to the Commission's text-to-911 rules. We seek comment on this analysis.

56. With respect to interconnected text messaging service providers, we propose to find that the CVAA provides us with authority to adopt the proposals in this further notice of proposed rulemaking, as some commenters in this proceeding suggest. Congress enacted the CVAA to increase the accessibility of modern communications technologies to people with disabilities, including access related to emergency

services, and the Commission relied, in part, on this authority when it adopted similar text-to-911 requirements. The CVAA provides the Commission with authority to “achiev[e] equal access to emergency services by individuals with disabilities, as a part of the migration to a national internet protocol-enabled emergency network.” In particular, the CVAA granted the Commission the authority to adopt regulations to implement recommendations proposed by the Emergency Access Advisory Committee established by the CVAA, which concern access to 911 and NG911 services, and to adopt “other regulations” as are necessary to achieve reliable, interoperable communication that ensures access by persons with disabilities to an IP-enabled emergency services network. We tentatively conclude that the CVAA provides authority for our proposals because access to 988 is similar to 911 access for the purposes of our CVAA authority. We seek comment on this tentative conclusion. Do commenters agree that access to the Lifeline or Veterans Crisis Line through 988 constitute “access to emergency services” under the CVAA? Do commenters agree that text-to-988 is necessary to achieve reliable, interoperable communication that ensures access by persons with disabilities to an IP-enabled emergency services network? More generally, does the CVAA provide us with authority to adopt the rules proposed in this further notice of proposed rulemaking?

57. We seek comment on any other sources of authority available to the Commission to adopt the proposals detailed in this further notice of proposed rulemaking. In particular, we seek comment on whether our section 251(e) authority over numbering provides authority to require support for text-to-988 service. Section 251(e)(1) of the Act grants us “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States” and provides that numbers must be made “available on an equitable basis.” This provision gives the Commission “authority to set policy with respect to all facets of numbering administration in the United States.” The Commission found in the *988 Report and Order* that section 251(e) provides us with the ability to regulate interconnected and one-way VoIP providers that make use of numbering resources when they connect with the PSTN. We seek comment on whether our numbering authority provides an additional, independent basis to adopt rules with respect to CMRS providers

and interconnected text messaging services.

58. We also seek comment on the Commission's authority to mandate location information with text-to-988 service. Section 222 of the Communications Act, as amended, provides strong legal protections for customer proprietary network information (CPNI), including geolocation information. Section 222(d) provides exceptions to allow CPNI and call location data to be shared for "emergency services." We seek comment on whether this could encompass the transmission of geolocation information with 988 calls. Should we choose to require covered text providers to include location information with texts to 988, does section 222 authorize the disclosure of location information with texts to 988? Are there other privacy concerns that we should consider with regard to texts to 988?

59. Finally, we seek comment on whether exercise of our ancillary authority would be necessary or appropriate to support any of our proposed rules. The Commission relied in part on ancillary authority to apply the bounce-back notification requirement to providers of interconnected text messaging services when it adopted text-to-911 requirements. Would a similar finding be appropriate with respect to any aspect of our text-to-988 rules?

D. Benefits and Costs of Text-to-988

60. We expect to find that the benefits of requiring service providers to support text-to-988 service will exceed the costs of implementation. We seek comment on this proposal, and any specific data regarding both the benefits of facilitating access to the Lifeline via texts to 988 and on the costs or burdens implementation of text-to-988 may impose upon covered text providers.

61. Suicide causes shock, anguish, grief, and guilt among victims' families and friends. Suicide attempts exact a similarly heavy toll on the community and the victim. The long-lasting damage from mental distress and suicide can extend deep into communities. As outlined above, we preliminarily believe that enabling text-to-988 service will improve access to lifesaving resources for individuals contemplating suicide or experiencing mental health crises, especially for members of at-risk communities such as young people, LGBTQ, people of color, and individuals with disabilities, thereby saving lives. By expanding access to counseling, text-to-988 may help break the cycle of pain, suffering, and suicide.

We seek comment generally on these and other important benefits that may follow from increased access to mental health resources via texting to 988.

62. We further seek comment on ways to quantify these benefits. Of course, the benefits to individuals who the Lifeline or Veterans Crisis Line places on a path to recovery, much less to their families and friends, cannot be reduced to dollars and cents. That being said, even if text-to-988 service could annually place just one-per-one-thousand suicide victims on a path to long-term recovery, the economic gain would be \$19.2 million in any single year, for a present-value of \$78.7 million over five years and \$134.9 million over ten years. In estimating benefits, we focus on teens and individuals with disabilities, as individuals in these groups are more likely to use a text-to-988 capability. Based on the most recent CDC data from 2015–2019, 11,283 youth (ages 15–19) and an estimated 13,101 individuals who are deaf, hard of hearing, deafblind or speech disabled committed suicide (using an estimated incidence among adults of 6%), or an average of more than 2,000 per year for each group. To calculate the estimated benefits for a single year, we multiply the annual average by 0.1% and the VSL ($2,000 * 0.001 * \$9.6 \text{ million} = \$19.2 \text{ million}$). We discount over five years and ten years at a 7% discount rate. We seek comment on this analysis.

63. Our proposed analysis does not examine certain categories of benefits. For example, we have not estimated the cost savings from medical expenses and loss-of-work avoided through reduced suicides and suicide attempts. We also have not estimated the cost savings of reduced burdens on PSAPs, police, ambulance, and fire and rescue services, which currently respond to some 911 texts that will be routed to the Lifeline, where they will be more effectively and efficiently de-escalated or otherwise resolved. Moreover, we have not examined the benefits of text-to-988 usage by every demographic group. For example, smartphone ownership and suicide are particularly common in younger age groups. According to the *Common Sense Census: Media Use by Tweens and Teens, 2019*, 53% of children have their own smartphone by age 11, and 69% have one at age 12. Currently, our estimated benefits analysis looks at youth ages 15–19. To accurately estimate these benefits, we seek comment on how broadly we should define youth who may text to 988. Relatedly, there is the possibility that adults without hearing or speech disabilities may rely exclusively on text-to-988 for added privacy or

convenience, meriting inclusion in our benefit estimates. We also seek comment on ways to better assess the long-term impact of text-to-988 service. Without longitudinal studies evaluating the long-term effectiveness of suicide call centers, we cannot pinpoint how many suicides text-to-988 will prevent in the long run. Available survey-based studies, however, reveal call centers can substantially reduce suicides during the initial call and follow-up periods. We seek comment on the types and magnitudes of these and other benefits not covered in this further notice of proposed rulemaking, as well as any overlooked categories of costs.

64. In the *Text-to-911* proceeding, the Commission estimated that the total cost for covered providers to implement text-to-911 service amounted to less than \$21 million. The costs of nationwide deployment of text-to-911 fell into three categories: CMRS and PSAP system cost components; interconnected text providers' software upgrades; and bounce-back messaging application alterations and server platform modifications. Assuming that all or most of the software and equipment necessary to receive and transmit 911 texts will again be needed to deploy text-to-988, we expect that the implementation costs for text-to-988 service will be comparable to the costs for text-to-911 service. Using cost estimates from the *Text-to-911* proceeding as a model, we estimate it will cost \$19,024,916 for CMRS providers to implement text-to-988, \$613,275 for interconnected text messaging service providers to implement text-to-988, and \$7,310,340 for Lifeline to route texts to local crisis centers. We convert the estimate for CMRS providers to implement text-to-911 service to 2021 dollars by multiplying by a Consumer Price Index (CPI) factor of 1.16, then discounting over five years at a 7% discount rate. Similarly, we convert the estimate for interconnected text messaging providers to implement text-to-911 service into 2021 dollars by using a CPI factor of 1.105. To soberly assess Lifeline capability, we assume that 100% of Lifeline call centers may require SMS upgrades and thus multiply PSAP software estimates by 2.22. To estimate the costs to equip the more than 180 Lifeline crisis centers, we calculate an average cost based on an estimated per PSAP cost of \$40,613 ($= (\$263,277,595 + \$12,891,283) / 6,800$), for a total of \$7,310,340 ($= 180 * \$40,613$). Therefore, we preliminarily estimate that total costs for implementing text-to-988 will be approximately \$27 million. We seek

comment on this analysis, including our preliminary assumption that text-to-911 software and equipment can be leveraged for texting to 988. Do commenters agree with CTIA that there are “significant technical and policy differences” between 988 and 911 service, and if so, how might those differences impact our evaluation? Furthermore, we seek comment on whether cost estimates for PSAPs from the *Text-to-911* proceeding reflect an appropriate estimate for costs to the Lifeline or Veterans Crisis Line. Are there other costs borne by the Lifeline or Veterans Crisis Line needed to implement text-to-988 service?

65. We preliminarily assume that some costs may be streamlined or reduced due to the previous implementation of text-to-911, which may be leveraged to facilitate text-to-988 capability and seek comment on this assumption. As a result, we anticipate that costs for covered text providers to implement text-to-988 may be less than what we estimate above and seek comment on this finding. We further seek comment on what extent covered text providers may rely upon existing text-to-911 services and how to quantify the costs needed to upgrade such systems to support text-to-988.

66. Deterring suicide has benefits that simply cannot be reduced to numbers—saving lives has value beyond measure. While recognizing this fact, to illustrate how the benefits of our proposal relate to the more aptly quantified costs, we attempt to estimate the quantifiable value of suicide prevention using a measure of collective willingness to pay. We propose calculating that the level of suicide prevention needed to generate benefits exceeding our preliminary estimate of \$27 million in text-to-988 costs is a total of four suicides avoided over five years. Specifically, the level of teen suicide prevention needed to generate benefits exceeding \$27 million is one per 2,821, and the level of suicide prevention among individuals with disabilities to generate benefits exceeding \$27 million is one per 3,275. Even assuming that text-to-988 prevented no suicides in its inaugural year as the service rolled out but prevented one suicide in each of the ensuing four years, measured in terms of the public’s willingness to pay for that mortality reduction, the present value of the benefit would be \$30.39 million, more than three million dollars greater than the total cost. The present value would be an uneven stream of payments of \$9.6 million (\$0 in Year 1 + \$9.6 million per year in Year 2 through Year 5) at a 7% discount rate. We seek comment on our analysis.

67. Using break-even points and highly attainable suicide reductions that are well below those suggested by survey studies, we estimate that the benefits of text-to-988 will far exceed the costs. Pooling teenagers and individuals with disabilities, we estimate that text-to-988 would need to prevent one suicide out of every six thousand in order to break-even in the first five years of deployment. Slightly raising the bar to preventing one suicide per one thousand, we further estimate that the more than \$157.5 million estimated benefit from modestly reducing suicides in two vulnerable populations far exceeds the text-to-988 deployment costs of \$19.6 million incurred by CMRS and interconnected text providers. Even if sizable Lifeline deployment costs are added, increasing estimated total cost to nearly \$27 million, the estimated benefits of text-to-988 remain greater by a multiple of nearly six. Over ten years, the benefits rise to \$269.8 million, exceeding costs by a multiple of nearly ten. We seek comment on these estimates. We also seek comment on the methods and underlying benefits and costs estimates, including those submitted by third parties, used to arrive at our overall proposed conclusion.

II. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Implementation of the National Suicide Hotline Improvement Act of 2018 further notice of proposed rulemaking (FNPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the further notice of proposed rulemaking. The Commission will send a copy of the further notice of proposed rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the further notice of proposed rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

2. In this FNPRM, the Commission proposes and seeks comment on requiring CMRS providers and providers of interconnected text

messaging services that enable consumers to send text messages to, and receive text messages from, the PSTN (covered text providers) to enable delivery of text messages to 988. The Commission proposes to require that covered text providers route 988 text messages to the National Suicide Prevention Lifeline’s (Lifeline) 10-digit number, currently 1–800–273–8255 (TALK). The Commission believes these proposed rules will expand the availability of mental health and crisis counseling resources to Americans who suffer from depressive or suicidal thoughts, by allowing individuals in crisis to reach the Lifeline by texting 988.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this FNPRM is contained in sections 201, 251, 301, 303, 307, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 251, 301, 303, 307, 309, 316.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United

States, which translates to 30.7 million businesses.

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired

Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

9. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

10. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA’s size standard the majority of incumbent LECs can be considered small entities.

11. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that

number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

12. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees.

Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

14. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

15. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that

year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. The applicable SBA size standard consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S.

Census Bureau data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to the Commission's Form 499 Filer Database, 86 active companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these companies have 1,500 or fewer employees, however, the Commission estimates that the majority of the 86 active prepaid calling card providers that may be affected by these rules are likely small entities.

18. *Wireless Telecommunications Carriers (except Satellite).* Neither the SBA nor the Commission has developed a size standard specifically applicable to Wireless Carriers and Service Providers. The closest applicable is Wireless Telecommunications Carriers (except Satellite), which the SBA small business size standard is such a business is small if it 1,500 persons or less. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Carriers and Service Providers are small entities.

19. According to internally developed Commission data for all classes of Wireless Service Providers, there are 970 carriers that reported they were engaged in the provision of wireless services. Of this total, an estimated 815 have 1,500 or fewer employees, and 155 have more than 1,500 employees. Thus, using available data, we estimate that the majority of Wireless Carriers and Service Providers can be considered small.

20. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite

systems, for transmission to viewers.” The SBA size standard for this industry establishes as small any company in this category with annual receipts less than \$41.5 million. Based on U.S. Census Bureau data for 2012, 367 firms operated for the entire year. Of that number, 319 firms operated with annual receipts of less than \$25 million a year and 48 firms operated with annual receipts of \$25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

21. *Cable Companies and Systems (Rate Regulation)*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are 4,600 active cable systems in the United States. Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

22. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but five cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that

would qualify as small cable operators under the definition in the Communications Act.

23. *All Other Telecommunications*. The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

24. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

25. *Semiconductor and Related Device Manufacturing*. This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices. Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices. The SBA has developed a small business size standard for Semiconductor and Related Device Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 862 establishments that operated that year. Of this total, 843 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

26. *Software Publishers*. This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only. The SBA has established a size standard for this industry of annual receipts of \$41.5 million or less per year. U.S. Census data for 2012 indicates that 5,079 firms operated for the entire year. Of that number 4,691 firms had annual receipts of less than \$25 million and 166 firms had annual receipts of \$25,000,000 to \$49,999,999. Based on this data, we conclude that a majority of firms in this industry are small.

27. *Internet Service Providers (Broadband)*. Broadband internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated

that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

28. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections and internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

29. *All Other Information Services*. The U.S. Census Bureau has determined that this category “comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, internet publishing and broadcasting, and Web search portals).” The SBA has developed a small business size standard for this category, which consists of all such firms with annual receipts of \$30 million or less. U.S. Census Bureau data for 2012 show that there were 512 firms that operated for the entire year. Of those firms, a total of 498 had annual receipts less than \$25 million and 7 firms had annual receipts of \$25 million to \$49,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

30. The FNPRM proposes and seeks comment on rules to require covered text providers to support text messaging to 988. It tentatively concludes that text-to-988 functionality will greatly improve consumer access to the Lifeline, particularly for at-risk populations, and thereby save lives. The proposed rules would require CMRS providers and interconnected text messaging service providers to route texts sent to 988 to the 10-digit Lifeline number, presently 1-800-273-8255 (TALK). The FNPRM proposes (1) establishing a definition that sets the

outer bound of text messages sent to 988 that covered text providers may be required to support; and (2) directing the Wireline Competition Bureau (Bureau) to identify text formats within the scope of that definition that the Lifeline can receive and thus covered text providers must support by routing to the 10-digit Lifeline number. The FNPRM seeks comment on this proposal. The Commission preliminarily believes that applying the same rules equally to all entities in this context is necessary to alleviate potential consumer confusion from adopting different rules for different covered text providers. The Commission proposes that the costs and/or administrative burdens associated with the rules will not unduly burden small entities.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

32. In the FNPRM, the Commission seeks comment from all entities, including small entities, regarding the impact of these proposed rules on small entities. The Commission seeks comment on the impact, cost or otherwise, that requiring text messaging to 988 capability will impose on regional and rural carriers and small businesses. The Commission also seeks comment on whether to adopt any exemptions for small businesses and if so, under what circumstances. The Commission asks and will consider alternatives to the proposals and on alternative ways of implementing the proposals.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

III. Procedural Matters

34. *Ex Parte Rules*. This proceeding shall be treated as a “permit-but-

disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

35. *Initial Regulatory Flexibility Analysis*. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

36. *Comment Filing Procedures.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

■ *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.

■ *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 45 L Street NE, 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, 35 FCC Rcd 2788 (OS 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

37. *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).

38. *Paperwork Reduction Act of 1995 Analysis.* This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens,

invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

39. *Contact Person.* For further information about this rulemaking proceeding, please contact Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0388 or michelle.sclater@fcc.gov.

IV. Ordering Clauses

40. *It is ordered*, pursuant to sections 201, 251, 301, 303, 307, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 251, 301, 303, 307, 309, 316, that the FNPRM in WC Docket No. 18-336 *is adopted*.

41. *It is further ordered* that the Petition for Reconsideration filed by Communications Equality Advocates *is granted in part* to the extent described herein.

42. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 52 as follows:

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 301, 303, 307, 309, 316, 332, unless otherwise noted.

Subpart E—Universal Dialing Code for National Suicide Prevention and Mental Health Crisis Hotline System

■ 2. Add § 52.201 to subpart E to read as follows:

§ 52.201 Texting to the National Suicide Prevention and Mental Health Crisis Hotline.

(a) *Support for 988 text message service.* Beginning [[DATE]], all covered text providers must have the capability to route a covered 988 text message to the current toll free access number for the National Suicide Prevention Lifeline, presently 1-800-273-8255 (TALK).

(b) *Definitions.* For purposes of this section:

988 text message. (i) Means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number, N11 service code, or 988;

(ii) Includes a SMS message and a MMS message; and

(iii) Does not include—

(A) A real-time, two-way voice or video communication; or

(B) A message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in paragraph (b)(2) of this section.

Covered 988 text message means a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.

Covered text provider shall mean all Commercial Mobile Radio Services (CMRS) providers and providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.

Multimedia message service (MMS) shall have the same definition as the term in § 64.1600(k) of the Commission's rules.

Short message service (SMS) shall have the same definition as the term in § 64.1600(m) of the Commission's rules.

[FR Doc. 2021-09855 Filed 6-9-21; 4:15 pm]

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FEDERAL REGISTER

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Part IV

The President

Executive Order 14034—Protecting Americans' Sensitive Data From Foreign Adversaries

Presidential Documents

Title 3—

Executive Order 14034 of June 9, 2021

The President

Protecting Americans' Sensitive Data From Foreign Adversaries

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that it is appropriate to elaborate upon measures to address the national emergency with respect to the information and communications technology and services supply chain that was declared in Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain). Specifically, the increased use in the United States of certain connected software applications designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary, which the Secretary of Commerce acting pursuant to Executive Order 13873 has defined to include the People's Republic of China, among others, continues to threaten the national security, foreign policy, and economy of the United States. The Federal Government should evaluate these threats through rigorous, evidence-based analysis and should address any unacceptable or undue risks consistent with overall national security, foreign policy, and economic objectives, including the preservation and demonstration of America's core values and fundamental freedoms.

By operating on United States information and communications technology devices, including personal electronic devices such as smartphones, tablets, and computers, connected software applications can access and capture vast swaths of information from users, including United States persons' personal information and proprietary business information. This data collection threatens to provide foreign adversaries with access to that information. Foreign adversary access to large repositories of United States persons' data also presents a significant risk.

In evaluating the risks of a connected software application, several factors should be considered. Consistent with the criteria established in Executive Order 13873, and in addition to the criteria set forth in implementing regulations, potential indicators of risk relating to connected software applications include: ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities; use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data; ownership, control, or management of connected software applications by persons subject to coercion or cooption by a foreign adversary; ownership, control, or management of connected software applications by persons involved in malicious cyber activities; a lack of thorough and reliable third-party auditing of connected software applications; the scope and sensitivity of the data collected; the number and sensitivity of the users of the connected software application; and the extent to which identified risks have been or can be addressed by independently verifiable measures.

The ongoing emergency declared in Executive Order 13873 arises from a variety of factors, including the continuing effort of foreign adversaries to steal or otherwise obtain United States persons' data. That continuing effort by foreign adversaries constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. To address this threat, the United States must act to protect against the risks associated with connected software applications that are designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary.

Additionally, the United States seeks to promote accountability for persons who engage in serious human rights abuse. If persons who own, control, or manage connected software applications engage in serious human rights abuse or otherwise facilitate such abuse, the United States may impose consequences on those persons in action separate from this order.

Accordingly, it is hereby ordered that:

Section 1. *Revocation of Presidential Actions.* The following orders are revoked: Executive Order 13942 of August 6, 2020 (Addressing the Threat Posed by TikTok, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain); Executive Order 13943 of August 6, 2020 (Addressing the Threat Posed by WeChat, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain); and Executive Order 13971 of January 5, 2021 (Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies).

Sec. 2. *Implementation.* (a) The Director of the Office of Management and Budget and the heads of executive departments and agencies (agencies) shall promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing Executive Orders 13942, 13943, or 13971, as appropriate and consistent with applicable law, including the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* In addition, any personnel positions, committees, task forces, or other entities established pursuant to Executive Orders 13942, 13943, or 13971 shall be abolished, as appropriate and consistent with applicable law.

(b) Not later than 120 days after the date of this order, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Health and Human Services, the Secretary of Homeland Security, the Director of National Intelligence, and the heads of other agencies as the Secretary of Commerce deems appropriate, shall provide a report to the Assistant to the President and National Security Advisor with recommendations to protect against harm from the unrestricted sale of, transfer of, or access to United States persons' sensitive data, including personally identifiable information, personal health information, and genetic information, and harm from access to large data repositories by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary. Not later than 60 days after the date of this order, the Director of National Intelligence shall provide threat assessments, and the Secretary of Homeland Security shall provide vulnerability assessments, to the Secretary of Commerce to support development of the report required by this subsection.

(c) Not later than 180 days after the date of this order, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of the Office of Management and Budget, and the heads of other agencies as the Secretary of Commerce deems appropriate, shall provide a report to the Assistant to the President and National Security Advisor recommending additional executive and legislative actions to address the risk associated with connected software applications that are designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary.

(d) The Secretary of Commerce shall evaluate on a continuing basis transactions involving connected software applications that may pose an undue risk of sabotage or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of information and communications technology or services in the United States; pose an undue risk of catastrophic effects on the security or resiliency of the critical infrastructure or digital economy of the United States; or otherwise pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. Based on the evaluation, the Secretary of Commerce shall take appropriate action in accordance with Executive Order 13873 and its implementing regulations.

Sec. 3. Definitions. For purposes of this order:

(a) the term “connected software application” means software, a software program, or a group of software programs, that is designed to be used on an end-point computing device and includes as an integral functionality, the ability to collect, process, or transmit data via the internet;

(b) the term “foreign adversary” means any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons;

(c) the term “information and communications technology or services” means any hardware, software, or other product or service primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means, including transmission, storage, and display;

(d) the term “person” means an individual or entity; and

(e) the term “United States person” means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

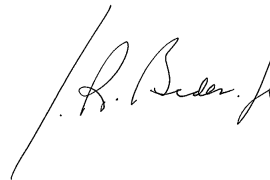
Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that extends from the bottom left towards the top right.

THE WHITE HOUSE,
June 9, 2021.

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