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The President

Proclamation 10275 of October 1, 2021

Fire Prevention Week, 2021

By the President of the United States of America

A Proclamation

During Fire Prevention Week, we honor our brave firefighters and first responders who risk their lives to protect us every day and reaffirm the importance of fire safety and preparedness. This week, I call on all Americans to educate themselves about fire prevention and safety and recommit to taking the necessary steps to prevent fires. Whether you are in your own home or camping in one of America's majestic National Parks, taking the proper precautions and safety measures can help prevent fires and save your life and the lives of your family and others while protecting our natural wonders.

Already this year, more than 44,000 wildfires have burned nearly 5.3 million acres of our land—an area roughly the size of the State of New Jersey. These fires have destroyed homes and priceless memories. They have forced families into shelters and filled the air with smoke for hundreds of miles. Precious lives have been lost. The fires have ground local economies to a halt, swallowed up family farms, and disrupted supply chains that fuel jobs, businesses, and communities all across the country.

These fires represent a code red for our Nation—and we know that, unless we take bold action to address climate change, they will only continue to gain in frequency and ferocity. Scientists have warned us for years that extreme weather will only get more extreme, and today we are living it in real time. Extreme weather, including wildfires, cost America $99 billion last year; unfortunately, we are poised to break that record this year.

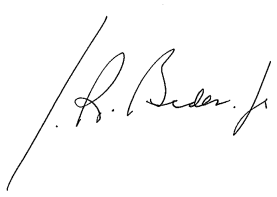
That is why my Administration is committed to taking on the threat of climate change and investing in America's resilience. We have proposed investing billions of dollars to strengthen our wildfire preparedness, resilience, and response. These investments will not just save lives and homes—they will also save industries and create new jobs. When I think about climate change, I always think about the millions of good-paying, union jobs we can create—but we also need to think about all of the jobs and industries we stand to lose if we fail to act boldly enough. The evidence is overwhelming that every dollar we invest in our resilience saves us six dollars down the road, when the next fire does not spread as widely and homes and businesses are spared.

Our response to this threat starts with our brave firefighters, who put their lives on the line every day. To better support the wildland firefighters who serve our Nation so courageously, my Administration is committed to making sure that we have enough firefighters on call who are trained, equipped, and ready to respond. That is why I took action this summer to ensure that all of our Federal firefighters will earn a minimum of $15 an hour. My Administration has increased wildland firefighter pay through bonuses and retention pay, extended seasonal firefighter employment to ensure robust response throughout the fire season, deployed new fire detection and air monitoring technologies, invoked the Defense Production Act to increase the supply of equipment, and brought additional aircraft and personnel to bear from both the Department of Defense and our partner nations.

During Fire Prevention Week, I call on all Americans to educate themselves about fire safety, take the appropriate precautions when encountering fires, and honor our courageous firefighters, volunteers, and first responders. I also encourage everyone to install and maintain smoke alarms in their homes—critical elements of fire safety that have helped significantly decrease United States home fire death rates over the past 40 years. By testing alarms every month and replacing them every 10 years, we can be better prepared to respond quickly to fires and prevent tragic loss of life.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 3 through October 9, 2021, as Fire Prevention Week. On Sunday, October 3, 2021, in accordance with Public Law 107–51, the flag of the United States will be flown at half-staff at all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I call on all Americans to participate in this observance with appropriate programs and activities and by renewing their efforts to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



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Proclamation 10276 of October 1, 2021

National Community Policing Week, 2021

By the President of the United States of America

A Proclamation

Community policing—the practice of law enforcement professionals working side-by-side with members of their communities to keep neighborhoods safe—is a critical and proven tool used by law enforcement agencies across our Nation to improve public safety and forge strong, valuable relationships. During National Community Policing Week, we recommit to building bonds of trust between our law enforcement officers and the communities they serve and encourage community policing practices across our Nation.

America's law enforcement officers play an essential role in protecting our communities and enforcing our laws. Every time an officer pins on their badge and walks out their front door, the loved ones they wave goodbye to are forced to wonder if they will return home safely. This week and every week, we recognize the bravery and dedication of our peace officers who put themselves on the line each and every day to protect and serve their communities.

We also recognize the role that all community members play in advancing public safety. As our country continues to reckon with a long and painful history of systemic racism—as well as the ongoing challenges of social and economic injustice, the COVID–19 pandemic, mental illness, homelessness, and substance abuse—we must think broadly, conscientiously, and creatively about the future of effective policing and how to foster strong police-community partnerships. Evidence and experience tell us that strong neighborhood relationships, the use of problem-solving to address crime systematically, and improvements to policy and training—key tenets of community policing—are all tools that help make our communities safer. My Administration is using programs such as the Department of Justice's Project Safe Neighborhoods to bring together law enforcement and community stakeholders in an effort to develop local solutions to help prevent violent crime.

I have long been an advocate for community policing, just as my late son Beau was when he served as Attorney General of Delaware—because he knew, as I know, that it works. It is especially important now, as State and local governments across the country continue to climb back from the once-in-a-century economic crisis triggered by COVID–19 last year. With their budgets decimated, countless communities were forced to cut essential services in 2020, including law enforcement and social services, just as a second public health epidemic of gun violence threatened the safety of their cities and towns. To help keep our communities safe, my Administration has provided local leaders with guidance on how American Rescue Plan funds can be used to help reduce violent crime and ensure public safety. I am also committed to investing in mental health services, drug treatment and prevention programs, services for people experiencing homelessness, and community violence intervention. Community violence intervention programs are vital to preventing violence before it occurs, and they have a proven track record of reducing crime by up to 60 percent in cities across our Nation.

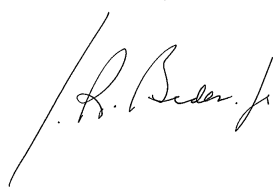
My Administration is also working to ensure that police departments have the resources they need to serve their communities safely and effectively.

Communities experiencing a surge in gun violence can make use of $350 billion in State and local funding included in the American Rescue Plan to hire law enforcement officers and advance community policing strategies. I have also proposed an additional $300 million in my budget for next year to support community policing across our country. As I seek that additional funding, the Office of Community Oriented Policing Services at the Department of Justice will continue to provide grants for community policing pilot projects and hiring local police officers—including funding prioritization for officers who will live in the communities they serve. These new resources will allow departments to implement community policing strategies and strengthen police-community partnerships.

At its core, community policing is about building trust and mutual respect between police and communities—important goals that can only be reached when we have accountability and faith in our justice system. That's why I strongly support the George Floyd Justice in Policing Act, which would deliver meaningful accountability, improved transparency, and the resources necessary to support community policing and build trust between law enforcement and the communities they serve. Although that bill is not yet law, my Administration will continue to consult with the law enforcement and civil rights communities to achieve reforms that advance safety, dignity, and equal justice for all Americans.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 3 through October 9, 2021, as National Community Policing Week. I call upon law enforcement agencies, elected officials, and all Americans to observe this week by recognizing ways to improve public safety, build trust, and strengthen community relationships.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



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Proclamation 10277 of October 1, 2021

Child Health Day, 2021

By the President of the United States of America

A Proclamation

Nothing is more vital to our country's future than our children's health and well-being. Each year on Child Health Day, we reaffirm our commitment to ensuring that every child in America has equal access to quality and affordable health care, child care, and education so that they can thrive and reach their full potential.

The COVID–19 pandemic has had a profound negative impact on the health and well-being of our Nation's children. A year of isolation from friends, extended family, and daily activities due to school closures and remote learning, as well as the loss of loved ones to the pandemic, has taken a tremendous toll on their mental health—and caused significant learning loss that may never be fully redressed. Families are also finding it harder to support their children during the pandemic, with many struggling to pay for expenses such as food, rent, health care, and transportation. And as scientists rigorously and independently review COVID–19 vaccines for children under age 12, too many of our kids returning to school—and the families they return to at the end of each school day—face unnecessary risks because there are not universal masking policies.

We owe it to our children to do everything in our power to support their safe and healthy development. Because our Nation's schools play a critical role in safeguarding our children's health and well-being, my Administration has made it a top priority to ensure that all students can access full-time, in-person instruction so that they can achieve their highest aspirations. My American Rescue Plan continues to deliver for schools—including $130 billion to ensure that every child can safely access full-time, in-person instruction and that schools can mitigate the risk of COVID–19 in the classroom. My Administration is committed to supporting school-based health programs, which is why my American Rescue Plan also provides States and school districts with billions of dollars for schools to bring on additional nurses, counselors, social workers, and more to address student needs, allowing teachers to stay focused on teaching. To further support children's success in school, I strongly encourage families to visit their pediatric providers for well-child visits and immunizations—including the COVID–19 vaccine for children age 12 and up.

My American Rescue Plan is also delivering critical resources to address the mental health needs of children, including $1.5 billion to support the Community Mental Health Services Block Grant, which provides much needed services to children with serious emotional disturbances. The law also provides $20 million to support youth suicide prevention and $30 million to expand Project AWARE, which supports wellness and resiliency programs in educational settings. It has invested $80 million to expand the Pediatric Mental Health Care Access Program, which provides telehealth services for children and adolescents with mental health conditions identified during routine visits, making mental health care more accessible nationwide, including for young people in Tribal and remote areas.

Additionally, the American Rescue Plan continues to deliver pandemic relief to families through a $150 million investment in the Maternal, Infant, and

Early Childhood Home Visiting Program to improve maternal and child health. The law also provides funding to support families with essential emergency supplies, including diapers, food, water, and hand sanitizer. Finally, the American Rescue Plan is lowering health insurance premiums for millions of Americans—positioning us to cut child poverty in America by nearly half.

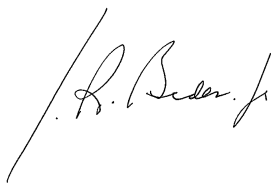
We need to invest in the healthy development of all our children—and that means helping parents with the costs of raising a family. That is why my Administration worked hard to expand the Child Tax Credit, which is putting money directly in the pockets of families with children each month to help pay for food, rent, a new pair of kids' shoes, or whatever else working parents need.

On Child Heath Day, we recommit ourselves to ensuring that our children can live long and healthy lives. Together, we can help all of our Nation's children stay healthy and learn, develop, and grow up to reach their full potential.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as Child Health Day and has requested that the President issue a proclamation in observance of this day.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Monday, October 4, 2021, as Child Health Day. I call upon families, child health professionals, faith-based and community organizations, and governments to help ensure that America's children stay safe and healthy.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2021–21956
Filed 10–5–21; 8:45 am]
Billing code 3395–F2–P

Rules and Regulations

Federal Register
Vol. 86, No. 191
Wednesday, October 6, 2021

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

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2021–USCBP–2021–0036]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection–018 Customs Trade Partnership Against Terrorism System of Records

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of a newly updated and reissued system of records titled, ''DHS/U.S. Customs and Border Protection–018 Customs Trade Partnership Against Terrorism (CTPAT) System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective October 6, 2021.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Debra Danisek, *Privacy.CBP@cbp.dhs.gov,* (202) 344–1610, CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. For privacy issues please contact: Lynn Parker Dupree, (202) 343–1717, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the **Federal Register**, 86 FR 15136 (March 22, 2021), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. In concert with that rulemaking, DHS/CBP issued an updated system of records notice, ''DHS/CBP–018 Customs Trade Partnership Against Terrorism System of Records'' in the **Federal Register** at 86 FR 15136 (March 22, 2021), outlining that (1) DHS/CBP updated its description of how CBP collects and maintains information pertaining to prospective, ineligible, current, or former trade partners that participate in the CTPAT Program; other entities and individuals in their supply chains; and members of foreign governments' secure supply chain programs that have been recognized by CBP, through a mutual recognition arrangement or comparable arrangement, as being compatible with the CTPAT Program; (2) DHS/CBP expanded the categories of records to include date of birth (DOB); country of birth; country of citizenship; travel document number; immigration status information; driver's license information; Trusted Traveler membership type and number; Registro Federal de Contribuventes (RFC) Persona Fisica (for Mexican Foreign Manufacturers, Highway Carriers, and Long Haul Carriers Only); and the U.S. Social Security number beyond sole proprietors to now include the collection from all individuals listed as associated with partner companies; (3) to clarify that CTPAT members may also submit information to DHS/CBP under the CTPAT Trade Compliance program, to include importer self-assessments and other documentation; and (4) to clarify and expand several previously issued routine uses.

DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

II. Public Comments

DHS received no comments on the NPRM and one non-substantive comment on the SORN. After full consideration of the public comment, the Department will implement the rulemaking as proposed for the reasons described in the NPRM and as described here in the final rule.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

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

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

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

■ 2. Amend Appendix C to part 5, by adding paragraph ''85'' to read as follows:

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

* * * * *

85. The U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-018 Customs Trade Partnership Against Terrorism (CTPAT) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP–018 CTPAT System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security activities. The system of records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security pursuant to 5 U.S.C. 552a(k)(2) has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

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

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities when weighing and evaluating all available information. Further, permitting amendment to records after an investigation has been completed could impose administrative burdens on investigators. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

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

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

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

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

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete.

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

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

Lynn Parker Dupree,

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

[FR Doc. 2021–21138 Filed 10–5–21; 8:45 am]

BILLING CODE 9111–14–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

[NRC–2014–0201]

RIN 3150–AJ45

Updates on the Export of Deuterium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising its regulations to remove the NRC's licensing authority for exports of deuterium for non-nuclear end use. The responsibility for the licensing of exports of deuterium for non-nuclear end use is being transferred to the Department of Commerce's Bureau of Industry and Security. The Bureau of Industry and Security is publishing a final rule in this edition of the **Federal Register** to include such exports under its export licensing jurisdiction. Exports of deuterium for nuclear end use will remain under the NRC's export licensing jurisdiction.

DATES: This final rule is effective on December 6, 2021.

ADDRESSES: Please refer to Docket ID NRC–2014–0201 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2014–0201. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *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 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Janice Owens, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9096; email: *Janice.Owens@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 109 of the Atomic Energy Act of 1954 (AEA), as amended by the Nuclear Non- Proliferation Act of 1978 (NNPA), authorizes and directs the NRC, after consultation with the Secretaries of State, Energy, and Commerce, to exercise its export licensing authority over ''items or substances'' determined by the Commission to be ''especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes'' (42 U.S.C. 2139(b)). Since 1978, under this authority the NRC has exercised jurisdiction over all exports of deuterium, including heavy water, as well as deuterium gas and other deuterated compounds for both nuclear and non-nuclear end uses. In the early years of the nuclear energy industry, deuterium oxide (heavy water)

was largely produced for use in nuclear reactors. High-purity reactor grade heavy water, which has a deuterium concentration of 99.75 percent or greater, has been used to operate reactors with natural uranium.

In the last decade, the market for deuterium has significantly expanded and evolved beyond nuclear reactor use. Non-nuclear use of deuterium includes, but is not limited to manufacture of advanced electronics, deuterated solvents, deuterated pharmaceuticals, hydrogen arc-lamps, neutron generators, and tracers in hydrological, biological, and medical studies. Despite this market change, the NRC has continued to control all exports of deuterium under the general or specific export licensing provisions in part 110 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Export and Import of Nuclear Equipment and Material.'' The NRC has determined, in consultation with the Executive Branch, that it is appropriate to revise its regulations and transfer the export licensing control of non-nuclear end use of deuterium to the Department of Commerce as was done for the non-nuclear end use of nuclear grade graphite in 2005 (70 FR 41937; July 21, 2005).

Under current NRC regulations, if an export of deuterium is not authorized under the general license in § 110.24, then a specific NRC export license is required. Paragraph (a) of the general license authorizes export of deuterium to countries that are not embargoed destinations (§ 110.28) or restricted destinations (§ 110.29) in quantities of 10 kg or less (50 kg of heavy water) with an annual limit of 200 kg (1,000 kg heavy water) to any one country. Paragraph (b) of § 110.24 authorizes deuterium export to restricted countries (§ 110.29) in quantities of 1 kg or less (5 kg of heavy water) with an annual limit of 5 kg (25 kg of heavy water) to any one restricted country.

Over the past 10 years, the quantity of deuterium exported for non-nuclear end use has steadily increased. A growing number of companies have been required to obtain specific licenses to export deuterium for non-nuclear use because the quantity exceeded the general license quantity thresholds. The NRC's recent licensing experience has shown that deuterium has been exported almost exclusively for non-nuclear industrial and research end use, prompting the reevaluation of NRC licensing requirements concerning these non-nuclear end use exports. Other supplier nations have export controls over deuterium but have limited them to cover exports ''for use in a nuclear reactor.'' This limitation appears in both the Nuclear Non-Proliferation Treaty Exporters Committee (Zangger Committee) and the Nuclear Suppliers Group (NSG) clarification of items on the Trigger List; see, for example, International Atomic Energy Agency INFCIRC/209/Rev.5 (March 2020) [1] and INFCIRC/254/Rev.14/Part 1 (October 2019),[2] respectively. The United States is a member of the Zangger Committee and a participating government of the NSG.

The history of the use of deuterium exported under the NRC's authority indicates that deuterium has not been diverted for known illicit purposes to produce weapons-grade material or for use in unsafeguarded nuclear activities. To the extent that any risk of diversion may exist, exports of deuterium for non-nuclear end use will continue to be controlled by the Department of Commerce, and appropriate control mechanisms exist within national regulatory authorities and the international community to detect efforts to divert deuterium for known illicit purposes.

II. Discussion

The NRC is revising its regulations that govern the export and import of nuclear equipment and material in 10 CFR part 110. The revisions are necessary to reflect technological advances involving the use of deuterium, including heavy water, as well as deuterium gas and deuterium or deuterated compounds (deuterium) for non-nuclear industrial and research activities. These changes will also harmonize U.S. export control of deuterium with international standards.

Based on the foregoing, the NRC has determined, after consultation with the Executive Branch, including the Departments of State, Energy, Defense, and Commerce, that deuterium for non-nuclear end use is not an item or substance that is ''especially relevant from the standpoint of export control because of [its] significance for nuclear explosive purposes.'' The Executive Branch concurs in the NRC's determination. The NRC has not, however, made the same finding under Section 109b. of the AEA with respect to exports of deuterium for nuclear end use, which the NRC will continue to regulate as a material ''especially relevant for export control because of [its] significance for nuclear explosive purposes.'' The NRC is also retaining authority for licensing exports of plants for the production, separation, or purification of heavy water, deuterium and deuterium compounds and especially designed or prepared assemblies or components for these plants. As such, no changes are being made to § 110.8(g) or appendix K to 10 CFR part 110.

The definition of *Deuterium* in § 110.2 is being revised to include what *deuterium for nuclear end use* means in the context of shared jurisdiction with Department of Commerce's Bureau of Industry and Security. The revised definition is consistent with the Zangger Committee Understandings documented in INFCIRC/209 and the NSG Guidelines documented in INFCIRC/254/Part 1.

The general license authorizing the export of deuterium for nuclear end use remains under NRC jurisdiction. The general license for the export of deuterium for nuclear end use found in § 110.24 is being revised to reflect that NRC jurisdiction applies to deuterium exports for nuclear end use only.

This final rule eliminates the licensing burden on exporters of deuterium for non-nuclear end use which, under current industry trends, constitutes the majority of deuterium being exported. Removing exports of deuterium for non-nuclear end use from 10 CFR part 110 also reduces recordkeeping and reporting requirements for those licensees who will no longer require specific licenses for exports of deuterium for non-nuclear end use.

Accordingly, the NRC concludes, with the concurrence of the Executive Branch, that exports of deuterium for non-nuclear end use are not especially relevant from the standpoint of export control because of their lack of significance for nuclear explosive purposes, and that control over such exports is most appropriately vested with the Department of Commerce. The NRC has determined that this rule will pose no unreasonable risk to the public health and safety or the common defense and security. The Department of Commerce is publishing regulations establishing licensing controls over this class of material in the RULES category of this issue of the **Federal Register**.

During the 60-day delay in the effective date for both rules, the NRC will contact existing licensees and persons with pending license applications affected by this transfer of jurisdiction to the Department of Commerce to ensure an uninterrupted transition from one regulatory authority to another.

[1] *http://zanggercommittee.org/download/18.6a32cf891717bf4c02d11/1588579969571/infcirc209r5.pdf.*

[2] *https://www.iaea.org/sites/default/files/publications/documents/infcircs/1978/infcirc254r14p1.pdf.*

III. Summary of Changes

Section 110.2 Definitions

This final rule revises the definition for *Deuterium* to clarify the difference between deuterium used for nuclear end use versus non-nuclear end use and to recognize the Department of Commerce as the regulatory authority for exports of deuterium for non-nuclear end use.

Section 110.9 List of Nuclear Material Under NRC Export Licensing Authority

This final rule revises paragraph (d) to include the phrase ''for nuclear end use'' after deuterium to clarify that the NRC has export authority over deuterium for nuclear end use only.

Section 110.24 General License for the Export of Deuterium

This final rule adds the phrase ''for nuclear end use'' to clarify that the general license for deuterium only applies to exports of deuterium for nuclear end use.

Section 110.40 Commission Review

This final rule revises paragraph (b)(5)(iii), redesignates paragraph (b)(5)(iv) as paragraph (b)(5)(v) and adds new paragraph (b)(5)(iv) to add ''for nuclear end use'' after ''heavy water'' to clarify that Commission review of license applications under this section only applies to an application to export 250 kilograms of heavy water for nuclear end.

Section 110.41 Executive Branch Review

This final rule revises paragraph (a)(4), redesignates paragraphs (a)(5) through (a)(10) as paragraphs (a)(6) through (a)(11), and adds new paragraph (a)(5) to clarify that Executive Branch review under this section only applies to an application to export of deuterium for nuclear end use.

Section 110.42 Export Licensing Criteria

This final rule revises paragraph (b) to add the phrase ''for nuclear end use'' to clarify that NRC export licensing jurisdiction over deuterium is limited to nuclear end use.

Section 110.54 Reporting Requirements

This final rule revises paragraph (a)(1) to add the phrase ''for nuclear end use'' after each mention of deuterium to clarify that reporting requirements for exports of deuterium only apply to exports of deuterium for nuclear end use.

Section 110.70 Public Notice of Receipt of an Application

This final rule revises paragraph (b)(3) to add the phrase ''for nuclear end use'' to clarify that the NRC will notice the receipt of export applications for 10,000 kilograms or more of heavy water for nuclear end use, excluding exports of heavy water to Canada for nuclear end use.

IV. Rulemaking Procedure

Because this rule involves a foreign affairs function of the U.S., the notice and comment provisions of the Administrative Procedure Act do not apply (5 U.S.C. 553(a)(1)).

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), to publish a general notice of proposed rulemaking (5 U.S.C. 604). As discussed in this document under Section IV, ''Rulemaking Procedure,'' this final rule is exempt from the requirements of 5 U.S.C. 553(b). Accordingly, the NRC also determines that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

VI. Regulatory Analysis

The NRC has sole control of the export of deuterium for nuclear applications. There is no other alternative to amending the regulations at 10 CFR part 110 to reflect changing circumstances. This final rule will reduce the burden on licensees and the cost to the public without posing an unreasonable risk to the public health and safety or to the common defense and security.

VII. Backfitting and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

IX. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XI. Congressional Review Act

This final rule 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.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Incorporation by reference, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110:

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. The authority citation for part 110 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170H, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 2160d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841);

Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

■ 2. In § 110.2, revise the definition of *Deuterium* to read as follows:

§ 110.2 Definitions.

* * * * *

Deuterium means deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000; and *deuterium for nuclear end use* means deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000, that is intended for use in a nuclear reactor. Export of deuterium and deuterium compounds, including heavy water, for non-nuclear end use is regulated by the Department of Commerce.

* * * * *

■ 3. In § 110.9, revise paragraph (d) to read as follows:

§ 110.9 List of Nuclear Material under NRC export licensing authority.

* * * * *

(d) Deuterium for nuclear end use.

* * * * *

■ 4. Revise § 110.24 to read as follows:

§ 110.24 General license for the export of deuterium for nuclear end use.

(a) A general license is issued to any person to export to any country not listed in § 110.28 or § 110.29:

(1) Deuterium and deuterium compounds (other than heavy water) for nuclear end use in individual shipments of 10 kilograms or less, not to exceed 200 kilograms per calendar year to any one country; and

(2) Heavy water for nuclear end use in individual shipments of 50 kilograms or less, not to exceed 1,000 kilograms per calendar year to any one country.

(b) A general license is issued to any person to export to any country listed in § 110.29:

(1) Deuterium and deuterium compounds (other than heavy water) for nuclear end use in individual shipments of 1 kilogram or less, not to exceed 5 kilograms per calendar year to any one country listed in § 110.29; and

(2) Heavy water for nuclear end use in individual shipment of 5 kilograms or less, not to exceed 25 kilograms per calendar year to any one country listed in § 110.29.

■ 5. In § 110.40, revise paragraph (b)(5)(iii), redesignate paragraph (b)(5)(iv) as paragraph (b)(5)(v), and add new paragraph (b)(5)(iv) to read as follows:

§ 110.40 Commission review.

* * * * *

(b) * * *

(5) * * *

(iii) 250 kilograms of source material;

(iv) 250 kilograms of heavy water for nuclear end use; or

* * * * *

■ 6. In § 110.41, revise paragraph (a)(4), redesignate paragraphs (a)(5) through (a)(10) as paragraphs (a)(6) through (a)(11), and add new paragraph (a)(5) to read as follows:

§ 110.41 Executive Branch review.

(a) * * *

(4) More than 3.7 TBq (100 Curies) of tritium;

(5) Deuterium for nuclear end use, other than exports of deuterium to Canada;

* * * * *

■ 7. In § 110.42, revise paragraph (b) introductory text to read as follows:

§ 110.42 Export licensing criteria.

* * * * *

(b) The review of license applications for the export of nuclear equipment, other than a production or utilization facility, and for deuterium for nuclear end use and nuclear grade graphite for nuclear end use is governed by the following criteria:

* * * * *

§ 110.54 [Amended]

■ 8. In § 110.54(a)(1), add the phrase ''for nuclear end use'' after the word ''deuterium'' wherever it appears.

■ 9. In § 110.70, revise paragraph (b)(3) to read as follows:

§ 110.70 Public Notice of receipt of an application.

* * * * *

(b) * * *

(3) 10,000 kilograms or more of heavy water for nuclear end use. (Note: Does not apply to exports of heavy water to Canada for nuclear end use.)

* * * * *

Dated: September 21, 2021.

For the Nuclear Regulatory Commission.

Margaret Doane,

Executive Director for Operations.

[FR Doc. 2021–21548 Filed 10–5–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0309; Project Identifier MCAI–2020–00918–T; Amendment 39–21730; AD 2021–19–12]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports and a design review indicating that there could be possible corrosion on the main landing gear (MLG) outer cylinder at the interface with the gland nut on the shock strut installation and on the forward and aft trunnion pins in the MLG dressed shock strut assembly. This AD requires detailed inspections for corrosion on the MLG outer cylinder assemblies, certain MLG dressed shock strut assemblies, and the MLG outer cylinder at the gland nut threads, thread relief groove, and chamfer; a detailed inspection for the presence of corrosion-inhibiting compound (CIC) on the MLG forward and aft trunnion pins and grease adapter assemblies; applicable corrective actions; application of primer, paint, and CIC as applicable; re-identification of certain part numbers; and marking of the MOD STATUS field of the nameplate of certain parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 10, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 10, 2021

ADDRESSES: For service information identified in this final rule, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–

8501; email *thd.crj@mhirj.com;* internet *https://eservices.aero.bombardier.com.*

You may view this service information 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 on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0309.

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–2021–0309; 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: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2019–17R1, dated June 18, 2020 (TCCA AD CF–2019–17R1, dated June 18, 2020) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for MHI RJ Aviation ULC (type certificate previously held by Bombardier, Inc.) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2C11 (Regional Jet Series 550) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0309.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on April 20, 2021 (86 FR 20461). The NPRM was prompted by reports and a design review indicating that there could be corrosion on the MLG outer cylinder assemblies and certain MLG dressed shock strut assemblies; primer was not correctly applied at the gland nut thread relief groove and chamfer areas on certain MLG outer cylinders during production; and CIC was inadvertently removed from certain MLG forward and aft trunnion pins and grease adapter assemblies during maintenance. The NPRM proposed to require detailed inspections for corrosion on the MLG outer cylinder assemblies, certain MLG dressed shock strut assemblies, and the MLG outer cylinder at the gland nut threads, thread relief groove, and chamfer; a detailed inspection for the presence of CIC on the MLG forward and aft trunnion pins and grease adapter assemblies; applicable corrective actions; application of primer, paint, and CIC as applicable; re-identification of certain part numbers; and marking of the MOD STATUS field of the nameplate of certain parts. The FAA is issuing this AD to address undetected corrosion on the MLG forward and aft trunnion pins, and the gland nut interface on certain MLG outer cylinders, which could result in an MLG collapse. 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

Air Line Pilots Association, International (ALPA) stated that it supports the NPRM.

Request to Separate the Proposed AD Into Two Separate AD Actions

SkyWest Airlines (SkyWest) requested that the proposed AD be separated into two AD actions. The commenter recommended that one AD address the MLG outer cylinder assemblies and dressed shock strut assemblies and the other AD address the MLG forward and aft trunnion pins. The commenter stated that there are multiple service bulletins and requirements specified in the proposed AD that are related to different MLG components.

The FAA disagrees with the commenter's request. The FAA acknowledges that this AD includes requirements for different MLG components and specifies multiple service bulletins; however, these MLG components are interrelated. In order to address the identified unsafe condition the requirements must be completed at the same time. In addition, the AD body is organized to facilitate an owner/operator's compliance with the requirements of this AD. Each header for paragraphs (g) through (k) of this AD identifies the affected MLG component and the applicable actions. The FAA has not changed this AD in regard to this issue.

Request To Allow Credit for Vendor Service Bulletins

SkyWest requested that paragraph (l) of the proposed AD, Credit for Previous Actions, be revised to include the applicable vendor service bulletins published by Goodrich. The commenter stated that this would alleviate the need to request multiple alternative methods of compliance (AMOCs) for airplanes on which the MLG gear is returned from overhaul with only the actions described in the Goodrich service bulletins accomplished rather that the actions described in the corresponding Bombardier service bulletins. The commenter noted that each Bombardier service bulletin specified in paragraph (l) of the proposed AD refers to a corresponding Goodrich service bulletin.

The FAA agrees to clarify what must be done if certain actions required by this AD have already been accomplished. Paragraph (f) of this AD states ''Comply with this AD within the compliance times specified, unless already done.'' If an operator has already accomplished some of the actions required by this AD then only the remaining actions need to be completed. Therefore, for airplanes that have already incorporated the actions described in UTC Aerospace Systems (Goodrich Aerospace Canada Ltd) Service Bulletin 49101–32–72, Goodrich Service Bulletin 49200–32–44, or Goodrich Service Bulletin 49200–32–80 prior to the effective date of this AD, only the remaining requirements described in the corresponding Bombardier service bulletins need to be completed on those airplanes.

The FAA does not agree with granting complete credit for the actions required by paragraphs (g), (i), and (j) of this AD using only the procedures described in the applicable Goodrich service

bulletins. There are additional actions required for these inspections, including corrective actions and operational tests, that are included in the Bombardier service bulletins but not in the corresponding Goodrich service bulletins.

In regards to paragraph (l) in this AD, Credit for Previous Actions, the intent of that paragraph is to provide credit for actions required by paragraphs (g), (h), and (j) of this AD if those actions were performed before the effective date of this AD using the certain earlier revisions of the applicable Bombardier service bulletins specified in paragraph (l) of this AD or equivalent service information. The FAA has not changed this AD in regard to this issue.

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

Bombardier has issued the following service information.

- Service Bulletin 670BA–32–024, Revision C, dated February 11, 2015, which describes procedures for a detailed visual inspection of the MLG outer cylinder assemblies and dressed shock strut assemblies for corrosion of the outer cylinder gland nut thread interface and relief area, and corrective actions including repair and corrosion removal.
- Service Bulletin 670BA–32–034, Revision B, dated December 21, 2018, which describes procedures for a detailed visual inspection of the inside diameter of the MLG trunnion pins for discrepancies including the condition of paint and CIC and evidence of corrosion, and corrective actions including replacement and rework of the trunnion pins as applicable.
- Service Bulletin 670BA–32–039, dated February 29, 2012, which describes procedures for inspections of the inner diameter of the MLG forward and aft trunnion pins for discrepancies including corrosion and inadequate CIC, and corrective actions including application of CIC and replacement of corroded forward and aft trunnion pins with serviceable parts.
- Service Bulletin 670BA–32–052, dated February 9, 2015, which describes procedures for a detailed visual inspection of the gland nut thread relief groove and chamfer surface for the condition of the protective coating and for discrepancies including evidence of corrosion or rework at the gland nut thread relief groove and chamfer surface of the MLG shock strut outer cylinder assemblies, and corrective actions including corrosion removal.

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 MCAI or Service Information

Although certain service information specifies to return damaged MLG trunnion pins to Goodrich Landing Gear, that action would not be required by this AD.

Costs of Compliance

The FAA estimates that this AD affects 562 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
Up to 100 work-hours × $85 per hour = Up to $8,500.	Up to $36,604	Up to $45,104	Up to $25,348,448.

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:

2021–19–12 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–21730; Docket No. FAA–2021–0309; Project Identifier MCAI–2020–00918–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 10, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the MHI RJ Aviation ULC (type certificate previously held by Bombardier, Inc.) airplanes, certificated in any category, specified in paragraphs (c)(1) through (3) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and Model CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers 10002 and subsequent.

(2) Model CL–600–2D15 (Regional Jet Series 705) airplanes and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 and subsequent.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 and subsequent.

(d) Subject

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

(e) Reason

This AD was prompted by reports and a design review indicating that there could be corrosion on the main landing gear (MLG) outer cylinder assemblies at the interface with the gland nut on the shock strut installation and on the forward and aft trunnion pins in the MLG dressed shock strut assemblies; primer was not correctly applied at the gland nut thread relief groove and chamfer areas on certain MLG outer cylinders during production; and corrosion-inhibiting compound (CIC) could have inadvertently been removed from certain MLG forward and aft trunnion pins and grease adapter assemblies during maintenance. The FAA is issuing this AD to address undetected corrosion on the MLG forward and aft trunnion pins, and the gland nut interface on certain MLG outer cylinders, which could result in an MLG collapse.

(f) Compliance

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

(g) Inspection and Application of Corrosion Protection for MLG Outer Cylinder Assemblies and Certain MLG Dressed Shock Strut Assemblies

For airplanes identified in paragraphs (c)(1) and (2) of this AD with MLG outer cylinder assemblies and MLG dressed shock strut assemblies having part numbers and serial numbers specified in the effectivity tables in Section 1.A.(1) of Bombardier Service Bulletin 670BA–32–024, Revision C, dated February 11, 2015 (Bombardier Service Bulletin 670BA–32–024, Revision C): At the applicable time specified in paragraph (g)(1) or (2) of this AD, do a detailed visual inspection for corrosion, and all other required actions specified in, and in accordance with, Section 2., Part A, of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–024, Revision C.

(1) For MLG assemblies that have accumulated 12,500 total flight hours or less, and have been in service for 72 months or less from entry into service or the last overhaul date: Within 6,500 flight hours or 36 months, whichever comes first, after the effective date of this AD.

(2) For MLG assemblies that have accumulated more than 12,500 total flight hours, or have been in service for more than 72 months from entry into service or the last overhaul date: Within 3,500 flight hours or 24 months, whichever occurs first, after the effective date of this AD.

(h) Inspection of Certain Other MLG Dressed Shock Strut Assemblies and Corrective Action

For airplanes identified in paragraphs (c)(1) and (2) of this AD, equipped with MLG dressed shock strut assemblies having part numbers (P/Ns) 49000–25 through 49000–46 and P/Ns 49050–15 through 49050–22, on which the MLG active dynamic seal has been replaced with the spare dynamic seal as specified in Bombardier CRJ700/705/900/1000 Aircraft Maintenance Manual (AMM), CSP B–001, Task 32–11–10–960–802, Revision 37, dated November 25, 2011, or earlier: At the applicable time specified in paragraph (h)(1) or (2) of this AD, do a detailed visual inspection of the MLG dressed shock strut assemblies for corrosion, and all applicable corrective actions, in accordance with Section 2., Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–024, Revision C.

(1) For MLG assemblies that have accumulated 12,500 total flight hours or less, and have been in service for 72 months or less from entry into service or the last overhaul date: Within 6,500 flight hours or 36 months, whichever comes first, after the effective date of this AD.

(2) For MLG assemblies that have accumulated more than 12,500 total flight hours, or have been in service for more than 72 months from entry into service or the last overhaul date: Within 3,500 flight hours or 24 months, whichever occurs first, after the effective date of this AD.

(i) Inspection of MLG Outer Cylinder at the Gland Nut Threads, Thread Relief Groove, and Chamfer and Corrective Action

For airplanes identified in paragraphs (c)(1) through (3) of this AD equipped with MLG outer cylinder assemblies having part numbers and serial numbers specified in Section 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–052, dated February 9, 2015: Within 6,500 flight hours or 36 months, whichever occurs first after the effective date of this AD, do a detailed visual inspection of the MLG shock strut outer cylinder assemblies, and do all other required actions specified in, and in accordance with, Section 2. of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–052, dated February 9, 2015.

(j) Inspection of Certain MLG Forward and Aft Trunnion Pins, and Corrective Action

For airplanes identified in paragraphs (c)(1) through (3) of this AD equipped with MLG forward and aft trunnion pins and grease adapter assemblies having part numbers and serial numbers specified in Section 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–034, Revision B, dated December 21, 2018 (Bombardier Service Bulletin 670BA–32–034, Revision B): At the applicable time specified in paragraph (j)(1) or (2) of this AD, do a detailed visual inspection of the MLG forward and aft trunnion pins and do all applicable corrective actions, in accordance with Section 2.B. and paragraphs 2.C.(6) and (8) of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–034, Revision B.

Note 1 to the introductory text of paragraph (j): The corrective action is applicable only to MLG forward and aft trunnion pins having P/Ns 49101–9, –11, and –13 reworked from P/Ns 49101–1, –5, and –7, as specified in the procedures in Goodrich Service Bulletin 49101–32–47, any revision. The corrective action is not applicable to MLG forward and aft trunnion pins having P/Ns 49101–9, –11, and –13 that were installed as original equipment or purchased from Goodrich Landing Gear.

(1) For MLG forward and aft trunnion pins and grease adapter assemblies that have not had the procedures specified in Goodrich Service Bulletin 49101–32–47, any revision, incorporated, at the applicable time specified in paragraph (j)(1)(i) or (ii) of this AD.

(i) For MLG forward and aft trunnion pins that have accumulated 10,000 total flight hours or less, and have been in service 60 months or less from the entry into service or last overhaul date: Within 6,500 flight hours or 36 months, whichever occurs first, after the effective date of this AD.

(ii) For MLG forward and aft trunnion pins that have accumulated more than 10,000 total flight hours, or have been in service for more than 60 months from entry into service or last overhaul date: Within 3,000 flight hours or 24 months, whichever occurs first, after the effective date of this AD.

(2) For MLG forward and aft trunnion pins that have had the procedures specified in Goodrich Service Bulletin 49101–32–47, any revision, incorporated: Within 6,500 flight hours or 36 months, whichever occurs first, after the effective date of this AD.

(k) Inspection of Certain Other MLG Trunnion Pins Having P/Ns 49101–9, 49101–11, and 49101–13, Maintained Using Certain Maintenance Instructions

For airplanes identified in paragraphs (c)(1) through (3) of this AD equipped with MLG forward and aft trunnion pins having P/Ns 49101–9, 49101–11, and 49101–13 that were maintained in accordance with the tasks identified in paragraphs (k)(1) through (4) of this AD: Within 6,500 flight hours or 36 months after the effective date of this AD, whichever occurs first, do a detailed visual inspection of the MLG forward and aft trunnion pins, and do all applicable corrective actions, in accordance with Section 2. of the Accomplishment

Instructions of Bombardier Service Bulletin 670BA–32–039, dated February 29, 2012.

Note 2 to the introductory text of paragraph (k): The corrective action described in this paragraph is not applicable to MLG forward and aft trunnion pins having P/Ns 49101–9, –11, and –13 reworked from P/Ns 49101–1, –5, and –7 as specified in the procedures in Goodrich SB 49101–32–47, any revision. The corrective action described in this paragraph is applicable to MLG forward and aft trunnion pins having P/Ns 49101–9, –11, and –13 installed as original equipment or purchased from Goodrich Landing Gear.

(1) Bombardier CRJ700/705/900/1000 AMM, CSP B–001, Task 32–11–05–400–801 A01, Revision 31, dated March 20, 2010, or earlier.

(2) Bombardier CRJ700/705/900/1000 AMM, CSP B–001, Task 32–11–05–400–801 A02, Revision 34, dated November 20, 2010, or earlier.

(3) Bombardier CRJ700/705/900/1000 AMM, CSP B–001, Task 32–11–05–400–804 A01, Revision 35, dated March 20, 2011, or earlier.

(4) Bombardier CRJ700/705/900/1000 AMM, CSP B–001, Task 32–11–05–400–805 A01, Revision 35, dated March 20, 2011, or earlier.

(l) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Section 2., Part A, of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–024, Revision B, dated December 19, 2012.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD if those actions were performed before the effective date of this AD using Section 2., Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–024, Revision B, dated December 19, 2012; or Bombardier CRJ700/705/900/1000 AMM, CSP B–001, Task 32–11–10–960–802, Revision 38, dated March 25, 2012.

(3) This paragraph provides credit for actions required by paragraph (j) of this AD if those actions were performed before the effective date of this AD using Section 2.B. and paragraphs 2.C.(6) and (8) of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–034, dated February 29, 2012; or Revision A, dated August 17, 2012.

(4) This paragraph provides credit for actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (l)(4)(i) through (iv) of this AD.

(i) Bombardier CRJ700/900/1000 AMM, CSP B–001, Task 32–11–05–400–801 A01, Revision 38, dated March 25, 2012.

(ii) Bombardier CRJ700/900/1000 AMM, CSP B–001, Task 32–11–05–400–801 A02, Revision 38, dated March 25, 2012.

(iii) Bombardier CRJ700/900/1000 AMM, CSP B–001, Task 32–11–05–400–804 A01, Revision 37, dated November 25, 2011, for actions specified in Section 2.B.(1) of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–039, dated February 29, 2012.

(iv) Bombardier CRJ700/900/1000 AMM, CSP B–001, Task 32–11–05–400–805 A01, Revision 37, dated November 25, 2011, for actions specified in Section 2.B.(2) of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–039, dated February 29, 2012.

(m) No Requirement for Return of Parts

Although certain service information referenced in this AD specifies to return damaged MLG trunnion pins to Goodrich Landing Gear, this AD does not include that requirement.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2019–17R1, dated June 18, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0309.

(2) For more information about this AD, contact: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(p) 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) Bombardier Service Bulletin 670BA–32–024, Revision C, dated February 11, 2015.

(ii) Bombardier Service Bulletin 670BA–32–034, Revision B, dated December 21, 2018.

(iii) Bombardier Service Bulletin 670BA–32–039, dated February 29, 2012.

(iv) Bombardier Service Bulletin 670BA–32–052, dated February 9, 2015.

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://eservices.aero.bombardier.com.*

(4) You may view this service information 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.

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

Issued on September 30, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–21830 Filed 10–5–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0357; Airspace Docket No. 21–ANE–3]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Portsmouth, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E airspace for Portsmouth International Airport at Pease, Portsmouth, NH, due to the decommissioning of the PEASE Very High Frequency Omnidirectional Range Collocated with Distance Measuring Equipment (VOR/DME) and cancellation of the standard instrument associated approach procedures (SIAPs). This action also updates the airport's name and geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, December 2, 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, 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 JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia 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 amends airspace for Portsmouth International Airport at Pease, Portsmouth, NH, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 37090, July 14, 2021) for Docket No. FAA–2021–0357 to amend Class D airspace and remove Class E surface airspace area designated as an extension to Class D and Class E airspace, and amend Class E airspace extending up from 700 feet above the surface for Portsmouth International Airport at Pease, Portsmouth, NH. In addition, the FAA is updating the airport name to Portsmouth International Airport at Pease, as well as the geographical coordinates of the 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 D and E airspace designations are published in Paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, 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 JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021 and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F 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 airspace, increasing the radius to 4.7 miles from 4.5 miles, removing Class E airspace area designated as an extension to Class D and Class E surface area as it is no longer necessary, and amending Class E airspace extending upward from 700 feet above the surface at Portsmouth International Airport at Pease, Portsmouth, NH, due to the decommissioning of the PEASE VOR/DME and cancellation of the associated approach procedures (SIAPs). This action updates the airport name to Portsmouth International Airport at Pease (formerly Pease International Tradeport). In addition, the FAA updates the geographic coordinates of the airport and Littlebrook Air Park to coincide with the FAA's database. These changes are necessary for continued safety and management of IFR operations in the area. Also, the reference to Newburyport, MA, and Boston, MA, Class E airspace areas are omitted from the Class E5 descriptor, as this airspace is shared amongst the airports.

FAA Order JO 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 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 5–6.5a. 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 JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE NH D Portsmouth, NH [Amended]

Portsmouth International Airport at Pease, NH
(Lat. 43°04′41″ N, long. 70°49′24″ W)
Eliot, Littlebrook Air Park, ME
(Lat. 43°08′35″ N, long. 70°46′24″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.7-mile radius of the Portsmouth International Airport at Pease, excluding that airspace within a 1.5-mile radius of the Littlebrook Air Park.

Paragraph 6004 Class E Airspace Designated as an Extension to Class E Surface Area.

* * * * *

ANE NH E4 Portsmouth, NH [Removed]

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

* * * * *

ANE NH E5 Portsmouth, NH [Amended]

Portsmouth International Airport at Pease, NH
(Lat. 43°04′41″ N, long. 70°49′24″ W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Portsmouth International Airport at Pease.

Issued in College Park, Georgia, on September 29, 2021.

Andreese C. Davis,

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

[FR Doc. 2021–21631 Filed 10–5–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2014–0225; Amdt. No. 91–331G]

RIN 2120–AL68

Extension of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (UKDV)

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

ACTION: Final rule.

SUMMARY: This action amends and extends the Special Federal Aviation Regulation (SFAR) prohibiting certain flights in the specified areas of the Dnipro Flight Information Region (FIR) (UKDV) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address hazards to persons and aircraft engaged in such flight operations due to the continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. The FAA extends the expiration date of this Special Federal Aviation Regulation from October 27, 2021, until October 27, 2023. Additionally, the FAA republishes the approval process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs, and makes minor administrative revisions.

DATES: This final rule is effective on October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Stephen Moates, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202–267–8166; email *stephen.moates@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the prohibition against certain flights in the specified areas of the Dnipro Flight Information Region (FIR) (UKDV) [1] by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Specifically, this amendment continues to prohibit all persons described in paragraph (a) of SFAR No. 113, 14 Code of Federal Regulations (CFR), § 91.1607, from conducting civil flight operations in the specified areas of the Dnipro FIR (UKDV) until October 27, 2023, due to hazards to the safety of U.S. civil aviation associated with continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. These circumstances result in a continued inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification.

[1] In its May 24, 2018, Aeronautical Information Regulation and Control (AIRAC 1806) publication, the Ukrainian State Air Traffic Services Enterprise, the air navigation service provider for Ukraine, renamed the FIR formerly known as the Dnipropetrovsk FIR (UKDV) the Dnipro FIR (UKDV). This rule uses the current FIR name, including in historical references to the FIR.

II. Legal Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, *United States Code* (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider, in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rulemaking under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 113, § 91.1607, from conducting flight operations in the specified areas of the Dnipro FIR (UKDV) due to hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S., 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.'' Section 553(d) also authorizes agencies to forgo the delay in the effective date of a final rule for good cause found and published with the rule. In this instance, the FAA finds good cause exists to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to allow any lapse of effectivity

of the prohibition of U.S. civil flights in the areas to which this SFAR applies, making it appropriate to waive any delay in effective date.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to the safety of flight is often fluid in circumstances involving weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist and militant activity, or heightened tensions. This fluidity and the need for the FAA to rely upon classified information in assessing these risks make issuing notice and seeking comments impracticable and contrary to the public interest. With respect to the impracticability of notice and comment procedures, the potential for changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent that these rules and any amendments to them are based upon classified information, the FAA is not legally permitted to share such information with the general public, who cannot meaningfully comment on information to which they are not legally allowed access. As a result, engaging in notice and comment would be impracticable.

Additionally, while there is a public interest in having an opportunity for the public to comment on agency action, it is crucial that the FAA's flight prohibitions, and any amendments thereto, reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options.

As described in the preamble to this rule, extending the flight prohibition for U.S. civil aviation operations in the specified areas of the Dnipro FIR (UKDV) is necessary due to continuing safety-of-flight hazards associated with the continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. Inadvertent risk to U.S. civil aviation operations continues to exist due to the potential for miscalculation or misidentification. Such circumstances establish that engaging in notice and comment for this rule would be impracticable and contrary to the public interest. Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background

On April 25, 2014, the FAA published SFAR No. 113, § 91.1607, which prohibited certain flight operations in a portion of the Simferopol FIR (UKFV) after Russia unlawfully seized Crimea from Ukraine.[2] In the months that followed, the violence and the associated risks to civil aviation expanded to encompass the entirety of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively). In addition to a series of attacks on military aircraft flying at low altitudes, two aircraft operating at high altitudes were shot down over eastern Ukraine. The first was a Ukrainian Antonov An-26, which was shot down on July 14, 2014, while flying at 21,000 feet, southeast of Luhansk, Ukraine. The second was Malaysia Airlines Flight 17 (MH 17), which was shot down on July 17, 2014, while flying over Ukraine at 33,000 feet, just west of the Russian border. All of the 298 passengers and crew on board MH 17 perished.

The FAA determined the use of weapons capable of targeting and shooting down aircraft flying on civil air routes at cruising altitudes posed a dangerous threat to U.S. civil aviation operating in the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively). On July 18, 2014, Coordinated Universal Time (UTC), the FAA issued NOTAM FDC 4/2182, which prohibited U.S. civil aviation operations in the entire Simferopol and Dnipro FIRs (UKFV and UKDV, respectively). The FAA subsequently incorporated the flight prohibition into SFAR No. 113, § 91.1607, on December 29, 2014.[3]

In 2018, the FAA determined security and safety conditions had stabilized sufficiently in certain portions of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively), for U.S. civil aviation operations to resume safely.[4] However, the FAA also determined continuing hazards to U.S. civil aviation existed in certain specified areas of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively).[5]

In the October 2018 final rule, the FAA determined an inadvertent risk to civil aviation associated with ongoing violence continued to exist in the eastern portion of the Dnipro FIR (UKDV). This violence involved localized skirmishes and the potential for large-scale fighting. The FAA was concerned this situation could lead to certain air defense forces misidentifying or engaging civil aviation. The FAA determined these threats were concentrated in the eastern portion of the Dnipro FIR (UKDV) within the Russian-controlled area and in close proximity to the line of contact that bordered that area. While the potential for fluctuating levels of military engagement continued along the line of contact in eastern portions of the Dnipro FIR (UKDV), the military situation had begun to stabilize, which reduced the risk of a large-scale conflict that might extend into the western portion of the Dnipro FIR (UKDV). The FAA determined these circumstances indicated the level of risk to civil aviation in the western portion of the Dnipro FIR (UKDV) had diminished from the level of risk that had existed when the FAA initially prohibited U.S. civil aviation operations in the entire Dnipro FIR (UKDV) in NOTAM FDC 4/2182. As a result, the FAA amended its flight prohibition for the Dnipro FIR (UKDV) to allow U.S. civil aviation to resume flight operations in the western portion of the Dnipro FIR (UKDV) from the surface to unlimited, west of a line drawn direct from ABDAR (471802N 351732E) along airway M853 to NIKAD (485946N 355519E), then along airway N604 to GOBUN (501806N 373824E). The October 2018 final rule also provided an exception to permit takeoffs and landings at Kharkiv International Airport (UKHH), Dnipro International Airport (UKDD),[6] and Zaporizhzhia International Airport (UKDE).

The FAA determined in the October 2020 final rule that the situation in the specified areas of the Dnipro FIR (UKDV) continued to present an unacceptable level of risk to U.S. civil aviation. This inadvertent risk arose from the ongoing violence based on localized skirmishes and the potential for large-scale fighting in the eastern portion of the Dnipro FIR (UKDV),

[2] *Prohibition Against Certain Flights in the Simferopol (UKFV) Flight Information Region (FIR)* final rule, 79 FR 22862 (Apr. 25, 2014).

[3] *Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs)* final rule, 79 FR 77857 (Dec. 29, 2014).

[4] *Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)* final rule, 83 FR 52954 (Oct. 19, 2018).

[5] Id. In 2020, the FAA determined U.S. civil aviation operations could resume safely in the specified areas of the Simferopol FIR (UKFV) when the flight prohibition for that FIR contained in SFAR No. 113, § 91.1607, expired on October 27, 2020. *Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)* final rule, 85 FR 65678 (Oct. 16, 2020).

[6] The FAA has updated the airport name in accordance with the Aeronautical Information Publication of Ukraine (AIP), available at *http://www.aisukraine.net/publications/eng/publ(eng).htm.*

particularly near the line of contact bordering the Russian-controlled area. The FAA remained concerned these skirmishes and the risk for potential large-scale fighting could lead to the misidentification or engagement of civil aviation by certain air defense forces. The various military and militia elements in the region continued to have access to a variety of anti-aircraft weapons systems, including man-portable air defense systems and possibly more advanced surface-to-air missile (SAM) systems with the capability to engage aircraft at higher altitudes.

Despite a cease-fire arrangement between Ukraine and Russia, which went into effect in December 2019, conflict-related air defense activity in eastern Ukraine also indicated the existence of an inadvertent risk to U.S. civil aviation operations in the eastern portion of the Dnipro FIR (UKDV). On April 5, 2020, Ukrainian forces shot down a Russian military unmanned aircraft flying over the Donetsk region in the eastern portion of the Dnipro FIR (UKDV). On April 10, 2020, the Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission (SMM) to Ukraine lost an unmanned aircraft to small-arms fire. Russian-led forces in eastern Ukraine regularly used SAMs, small-arms ground fire, and Global Positioning System (GPS) jamming to target OSCE SMM unmanned aircraft, including in the eastern portion of the Dnipro FIR (UKDV). In October 2019, a Ukrainian military official indicated in public statements that Ukraine had lost numerous unmanned aircraft to Russian GPS interference throughout the conflict, though the true number of unmanned aircraft lost remained unconfirmed.

Although the situation had remained mostly stable since 2018, skirmishes and attacks within the Dnipro FIR (UKDV) and sub-adjacent Ukrainian territory continued to occur with little or no warning. As a result of the significant, continuing unacceptable risk to the safety of U.S. civil aviation operations in the specified areas of the Dnipro FIR (UKDV), the FAA extended the expiration date of SFAR No. 113, § 91.1607, from October 27, 2020, to October 27, 2021.

IV. Discussion of the Final Rule

During the first quarter of the calendar year 2021, an increasing number of cease-fire violations in the eastern portion of the Dnipro FIR (UKDV) occurred, particularly near the line of contact bordering the Russian-controlled area. In addition, by late March 2021, Russia had deployed additional military capabilities, including ground forces, tactical fighter aircraft, and air defense equipment, to occupied Crimea and to western Russia in close proximity to the Russia-Ukraine border. Russia's military force mobilization, increased cease-fire violations along the established line of contact in eastern Ukraine, and heightened political rhetoric had the potential to escalate tensions further and result in increased military activities in the region, which elevates the level of risk to U.S. civil aviation operations. Russian military exercises near the Russia-Ukraine border further strained regional tensions.

Jamming and electronic warfare activity, which could affect civil aircraft navigation or communications systems, also increased in the border region. On April 8 and 9, 2021, the OSCE's SMM to Ukraine reported two UAS flights experienced GPS interference while conducting monitoring missions along the line of contact. The April 9, 2021, SMM UAS flight experienced GPS interference resulting in an attempted orbit maneuver to regain the GPS signal prior to executing an emergency landing. OSCE indicated increased GPS interference occurred since March 21, 2021, along the line of contact.

Overall, circumstances in the region presented an increased potential inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification. Heightened regional tensions contributed to the inadvertent shoot down of Malaysia Airlines Flight 17 (MH 17) over eastern Ukraine in July 2014. Although this risk was greatest in the specified areas of the Dnipro FIR (UKDV) in which SFAR No. 113, § 91.1607, prohibits U.S. civil aviation operations, it also extended beyond those areas. As a result, the FAA issued two advisory Notices to Airmen (NOTAMs): NOTAMs KICZ A0012/21[7] and KICZ A0013/21.[8] In late April 2021, Russia declared its military readiness exercise had met its objectives and announced forces deployed to the Russia-Ukraine border region would begin returning to their respective bases. By early to mid-May 2021, this redeployment activity had begun, reducing tensions and the associated risks to civil aviation in the Simferopol FIR (UKFV), the Kyiv FIR (UKBV), and the Dnipro FIR (UKDV) from their peak. Consequently, the FAA cancelled NOTAM KICZ A0013/21 on May 13, 2021. NOTAM KICZ A0012/21 remains in effect.

An unacceptable level of inadvertent risk to U.S. civil aviation operations remains in the specified areas of the Dnipro FIR (UKDV) described in this final rule, which include the airspace over and near the line of contact where most of the recent cease-fire violations occurred. While tensions between Ukraine and Russia have lowered from their peak earlier this year, they remain elevated, in part due to the recent period of heightened Russian military force posturing in Crimea and along the Russia-Ukraine border and increases in cease-fire violations. In addition, the conflict between Ukraine and Russian-back separatists in eastern Ukraine continues. These circumstances result in a continued inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification.

Therefore, as a result of the significant, continuing unacceptable risk to the safety of U.S. civil aviation operations in the specified areas of the Dnipro FIR (UKDV), the FAA extends the expiration date of SFAR No. 113, § 91.1607, from October 27, 2021, to October 27, 2023.

Further amendments to SFAR No. 113, § 91.1607, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the specified areas of the Dnipro FIR (UKDV).

The FAA also republishes the details concerning the approval and exemption processes in sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 113, § 91.1607.

Finally, the FAA makes several technical revisions to the rule to reflect current naming conventions and clarify the description of the airspace in which

[7] NOTAM KICZ A0012/21 (issued on or about Apr. 17, 2021) advised U.S. civil aviation to exercise extreme caution when flying into, out of, within, or over those areas of airspace in the Moscow FIR (UUWV) and Rostov-na Donu FIR (URRV) within 100 nautical miles outside the boundaries of the Dnipro FIR (UKDV), the Simferopol FIR (UKFV), and the Kyiv FIR (UKBV), including that portion of the Kyiv Upper Information Region (UIR) (UKBU) airspace within the lateral limits of the UKDV, UKFV, and UKBV FIRs.

[8] NOTAM KICZ A0013/21 (issued on or about Apr. 17, 2021) advised U.S. civil aviation operators to exercise extreme caution when flying into, out of, within, or over the Dnipro FIR (UKDV), the Simferopol FIR (UKFV), and the Kyiv FIR (UKBV), including a portion of the Kyiv Upper Information Region (UIR) (UKBU) airspace within the lateral limits of the entire UKDV, UKFV, and UKBV FIRs.

U.S. civil aviation operations remain prohibited. This rule contains updated names for the Dnipro FIR (UKDV) and the Dnipro International Airport (UKDD) to reflect Ukraine's current nomenclature. This rule also describes the specified areas of the Dnipro FIR (UKDV) in a manner that is easier for operators to understand. Previously, paragraph (b) of SFAR No. 113, § 91.1607, described the boundaries of the specified areas of the Dnipro FIR (UKDV), from surface to unlimited, in terms of airways and detailed waypoints with their corresponding latitudes and longitudes. Meanwhile, paragraph (f) of the rule described the boundaries of the Dnipro FIR (UKDV) in terms of a series of waypoints and their corresponding latitudes and longitudes and international borders. Because paragraph (f) is no longer necessary, this rule contains a clarifying sentence to paragraph (b) to describe the flight prohibition. The boundaries of the area in which the FAA prohibits U.S. civil aviation operations that are subject to this rule remain unchanged.

V. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the specified areas of the Dnipro FIR (UKDV) described in this rule. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 113, § 91.1607, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the specified areas of the Dnipro FIR (UKDV), that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 113, § 91.1607, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.[9] The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) Attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the proposed operation(s) to commence.

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267–8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 113, § 91.1607, or multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the specified areas of the Dnipro FIR (UKDV) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Dnipro FIR (UKDV) and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the specified areas of the Dnipro FIR (UKDV). The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request nor any operators the requestor subsequently seeks to add to the approval may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the specified areas of the Dnipro FIR (UKDV). The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtain from the Air Transportation Division by calling (202) 267–8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 113, § 91.1607, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may

[9] This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the Dnipro FIR (UKDV); and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the Dnipro FIR (UKDV).

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S.C.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 113, § 91.1607. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those the approval process described in the previous section contemplates. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the specified areas of the Dnipro FIR (UKDV) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Dnipro FIR (UKDV) and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble, to the proposed operations, to establish that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 113, § 91.1607. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 113, § 91.1607.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

VII. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose

an unfunded mandate on State, local, or tribal governments or on the private sector by exceeding the threshold identified previously.

A. Regulatory Evaluation

This action extends without change the prohibition against certain U.S. civil flight operations in the specified areas of the Dnipro FIR (UKDV) for two additional years due to significant, continuing hazards to U.S. civil aviation in that airspace, as described in the preamble to this final rule. Because this rule does not apply to the western portion of the Dnipro FIR (UKDV), U.S. civil operators and airmen may continue to operate in that area. This action also continues to permit U.S. civil flight operations to the extent necessary to conduct takeoffs and landings at three Ukrainian international airports near the western boundary of SFAR No. 113, § 91.1607, in the Dnipro FIR (UKDV).

The FAA acknowledges the continued prohibition of U.S. civil aviation operations in the specified areas of the Dnipro FIR (UKDV) might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action to exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the specified areas of the Dnipro FIR (UKDV). The FAA will continue to monitor and evaluate the safety and security risks to U.S. civil operators and airmen as a result of conditions in the specified areas of the Dnipro FIR (UKDV) and the surrounding region.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the specified areas of the Dnipro FIR (UKDV), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistent with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a ''significant energy action'' under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

IX. Additional Information

A. Electronic Access

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ukraine.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Revise § 91.1607 to read as follows:

§ 91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (UKDV).

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Dnipro FIR (UKDV) from the surface to unlimited, east of a line drawn direct from ABDAR (471802N 351732E) along airway M853 to NIKAD (485946N 355519E), then along airway N604 to GOBUN (501806N 373824E). This prohibition applies to airways M853 and N604. This prohibition extends from the surface to unlimited and includes that portion of the Kyiv Upper Information Region (UIR) (UKBU) airspace within the lateral limits set forth in this paragraph (b) from the upper boundaries of the Dnipro FIR to unlimited.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the specified areas described in paragraph (b) of this section, under the following circumstances:

(1) Operations are permitted to the extent necessary to take off from and land at the following three airports, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Ukraine:

(i) Kharkiv International Airport (UKHH);

(ii) Dnipro International Airport (UKDD); and

(iii) Zaporizhzhia International Airport (UKDE).

(2) Operations are permitted provided that they are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the department, agency, or instrumentality of the U.S. Government and the person described in paragraph (a) of this section) with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the responsible Flight Standards office a complete report of the operations of the aircraft involved in the deviation, including a

description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until October 27, 2023. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about September 30, 2021.

Steve Dickson,

Administrator.

[FR Doc. 2021–21797 Filed 10–5–21; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 210923–0195]

RIN 0694–AI44

Control of Deuterium That Is Intended for Use Other Than in a Nuclear Reactor Under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is publishing this final rule in conjunction with a U.S. Nuclear Regulatory Commission (NRC) final rule to revise its regulations to remove the NRC's licensing authority for exports of deuterium for non-nuclear end use. The responsibility for the licensing of exports of deuterium for non-nuclear end use is being transferred to the Department of Commerce's Bureau of Industry and Security (BIS). BIS is publishing this final rule to include deuterium under its export licensing jurisdiction under the Export Administration Regulations (EAR). This Commerce final rule describes the changes made to the EAR to control the deuterium moved from the export control authority of the NRC to the export control authority of BIS under the EAR. Exports of deuterium for nuclear end use will remain under the NRC's export licensing jurisdiction.

DATES: This rule is effective December 6, 2021.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482–1641 or email *steven.clagett@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce is publishing this final rule in conjunction with a U.S. Nuclear Regulatory Commission (NRC) final rule being published in this issue of the **Federal Register** to revise its regulations to remove the NRC's licensing authority for exports of deuterium for non-nuclear end use. The responsibility for the licensing of exports of deuterium for non-nuclear end use is being transferred to the Department of Commerce's Bureau of Industry and Security (BIS). BIS is publishing this final rule to include deuterium under its export licensing jurisdiction under the Export Administration Regulations (EAR). This Commerce final rule describes the changes made to the EAR to control the deuterium moved from the export control authority of the NRC to the export control authority of BIS under the EAR. Exports of deuterium for nuclear end use will remain under the NRC's export licensing jurisdiction.

Deuterium Under NRC and Its Evolution Into Broader Commercial Use

Section 109 of the Atomic Energy Act of 1954 (AEA), as amended by the Nuclear Non-Proliferation Act of 1978 (NNPA), authorizes and directs the NRC, after consultation with the Secretaries of State, Energy, and Commerce, to exercise its export licensing authority over ''items or substances'' determined by the Commission to be ''especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes'' (42 U.S.C. 2139(b)). Since 1978, under this authority, the NRC has exercised jurisdiction over all exports of deuterium, including heavy water, as well as deuterium gas and other deuterated compounds for both nuclear and non-nuclear end uses. In the early years of the nuclear energy industry, deuterium oxide (heavy water) was largely produced for use in nuclear reactors. High-purity reactor grade heavy water, which has a deuterium concentration of 99.75 percent or greater, has been used to operate reactors with natural uranium.

In the last decade, the market for deuterium has significantly expanded and evolved beyond nuclear reactor use. Non-nuclear use of deuterium includes but is not limited to production of: Advanced electronics, deuterated solvents, deuterated pharmaceuticals, hydrogen arc-lamps, neutron generators, and tracers in hydrological, biological, and medical studies.

Despite this market change, the NRC has continued to control all exports of deuterium under the general or specific export licensing provisions in 10 CFR part 110. The NRC has determined, in consultation with the Executive Branch, that it is appropriate to revise its regulations and transfer the export licensing control of non-nuclear end uses of deuterium to the Department of Commerce, as was done for the non-nuclear end uses of nuclear graphite in 2005 (70 FR 41937; July 21, 2005).

Over the past 10 years, the quantity of deuterium exported for non-nuclear end use has steadily increased. A growing number of companies have been required to obtain specific licenses to export deuterium for non-nuclear use because the quantity exceeded the general license quantity thresholds. As stated in the NRC final rule published in this edition of the **Federal Register** in conjunction with this Commerce final rule, the NRC's recent licensing experience has shown that deuterium has been exported almost exclusively for non-nuclear industrial and research end uses, prompting the reevaluation of NRC licensing requirements concerning these non-nuclear end use exports. Other supplier nations have export controls over deuterium but have limited them to cover exports ''for use in a nuclear reactor.'' This limitation appears in both the Nuclear Non-Proliferation Treaty Exporters Committee (Zangger Committee) and the Nuclear Suppliers Group (NSG) clarifications of items on the Trigger List. The United States is a member of the Zangger Committee and a Participating Government of the NSG.

As stated in the NRC final rule published in conjunction with this Commerce final rule, the history of the use of deuterium exported under the NRC's authority indicates that deuterium has not been diverted for known illicit purposes to produce weapons-grade material or for use in unsafeguarded nuclear activities. To the extent that any risk of diversion may exist, exports of deuterium for non-nuclear end use will continue to be controlled by the Department of Commerce under the EAR, and appropriate control mechanisms exist within national regulatory authorities and the international community to detect efforts to divert deuterium for known illicit purposes. Exports and reexports of deuterium for non-nuclear end use will be controlled for Nuclear Proliferation (NP) Column 2 under the EAR. A license will be required for all destinations controlled for NP 2 reasons, which means an authorization (a BIS license or license exception) will be required under the EAR for exports and reexports to these destinations. In

addition, the end-use and end-user controls under part 744 of the EAR will impose restrictive license requirements for exports, reexports, and transfers (in-country) involving end uses and end users that would be contrary to U.S. export control interests, *e.g.,* under § 744.2 (Restrictions on certain nuclear end uses), § 744.6 (Restrictions on certain activities of U.S. persons), and to entities of concern (*e.g.,* Entity List and Denied Persons List). The U.S. NRC took this robust control structure under the EAR into account when determining that appropriate destination, end-user, and end-use based controls will be in place to appropriately control the deuterium for non-nuclear end use. The following section describes the changes made to the EAR to control the deuterium moved from the export control authority of the NRC to the export control authority of BIS under the EAR.

Amendments to the Export Administration Regulations (EAR)

This final rule revises the heading, the License Requirement Note, and the Related Controls paragraph, Related Definitions paragraph and the Items paragraph in the List of Items Controlled section to control deuterium under ECCN 1C298 as described below. The deuterium added to ECCN 1C298 will be controlled for the same reason and have the same license exception eligibility as the graphite controlled under 1C298, so no changes are made to the Reasons for Control paragraph in the License Requirements section and License Exceptions section. The deuterium, as referenced above, will be controlled for NP Column 2, and License Exceptions LVS, and GBS will not be available.

This final rule revises the heading of ECCN 1C298 by adding the term deuterium in addition to the graphite that is already controlled under 1C298. Both graphite and deuterium will be controlled under ECCN 1C298 when the graphite or deuterium is intended for use other than in a nuclear reactor and meets the additional control parameters under Items paragraphs .a or .b of 1C298. Because this final rule is adding Items paragraphs .a and .b in the List of Items Controlled section to further describe the graphite and deuterium controlled under ECCN 1C298, this final rule removes the control text from the heading that described what graphite was controlled under the ECCN prior to this final rule being published. This removed control text from the heading is being added as new items paragraph .a under 1C298.

This final rule revises License Requirement Note to ECCN 1C298 to make one conforming change. This final rule adds the term 'deuterium' to specify that all graphite and deuterium, as defined in ECCN 1C298, intended for use in a nuclear reactor is subject to the export licensing authority of the NRC.

This final rule adds a Related Controls paragraph (3) in the List of Items Controlled section of ECCN 1C298 to provide greater detail on the deuterium, including any deuterium compound, that, when intended for use in a nuclear reactor, is subject to the export licensing authority of the NRC.

This final rule adds a new Related Definition for Deuterium in the List of Items Controlled section of ECCN 1C298. This ECCN-specific definition specifies 'Deuterium' means deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

Lastly, this final rule revises the Items paragraph in the List of Items Controlled section to add Items paragraphs .a and .b. This final rule adds Items paragraph .a to identify the graphite controlled under ECCN 1C298. As referenced above, this is the same control parameter text that was previously in the heading, but is now being moved to items paragraph .a under ECCN 1C298. This final rule adds Items paragraph .b to identify the 'deuterium,' including any deuterium compound, including heavy water that when it meets the control parameter text of this paragraph .b will be controlled under ECCN 1C298. Specifically, 'deuterium' not for use in a nuclear reactor will be controlled under ECCN 1C298.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Commerce estimates that this rule will result in a minimal increase to the number of license requests submitted to BIS annually.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB-approved collections of information subject to the PRA: 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute; and 0607–0152 ''Automated Export System (AES) Program,'' which carries a burden hour estimate of 3 minutes per electronic submission. This rule changes the respondent burden by increasing the estimated number of submissions by 20. Specifically, BIS estimates that this control of deuterium under the EAR will result in an increase of twenty license applications submitted annually to BIS. The additional burden falls within the estimated burden approved by OMB for the following information collections: 0694–0088, 0694–0096, and 0607–0152.

Any comments regarding these collections of information, including suggestions for reducing the burden, may be submitted online at *https://www.reginfo.gov/public/do/PRAMain.* The particular information collection may be found by using the search function and entering either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for

public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 774—THE COMMERCE CONTROL LIST

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. In Supplement No. 1 to part 774, Category 1, revise Export Control Classification Number (ECCN) 1C298 to read as follows:

* * * * *

1C298 Graphite and deuterium that is intended for use other than in a nuclear reactor, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NP

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NP applies to entire entry.	NP Column 2.

License Requirement Note: The graphite and deuterium, as defined in this entry, when intended for use in a nuclear reactor, is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: (1) See also 1C107. (2) Graphite having a purity level of less than 5 parts per million ''boron equivalent'' as measured according to ASTM standard C–1233–98 and intended for use in a nuclear reactor is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (3) Deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000; and intended for use in a nuclear reactor is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

Related Definitions: For the purpose of this entry, graphite with a purity level better than 5 parts per million boron equivalent is determined according to ASTM standard C1233–98. In applying ASTM standard C1233–98, the boron equivalence of the element carbon is not included in the boron equivalence calculation, since carbon is not considered an impurity. For the purpose of this entry, 'Deuterium' means deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

Items:

a. Graphite with a boron content of less than 5 parts per million and a density greater than 1.5 grams per cubic centimeter that is intended for use other than in a nuclear reactor;

b. 'Deuterium' not for use in a nuclear reactor.

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–21509 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Office of the Under-Secretary for Economic Affairs

15 CFR Part 1500

[Docket No.: 210820–0165]

RIN: 0605–AA53

Concrete Masonry Products Research, Education, and Promotion Order

AGENCY: Under-Secretary for Economic Affairs, United States Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: This action contains a correction to the final rule published on September 15, 2021, setting forth the Concrete Masonry Products Research, Education, and Promotion Order, as authorized by the Concrete Masonry Products Research, Education, and Promotion Act of 2018, which establishes a Concrete Masonry Products Board (Board) composed of industry members appointed by the Secretary of Commerce (Secretary) to develop and implement programs of research, education, and promotion in the concrete masonry products industry. This action corrects email contact information found in the previously published rule.

DATES: October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Communications for the Commerce Checkoff Implementation Program, Office of the Under Secretary for Economic Affairs, telephone: (202) 482–0671 or via electronic mail: *michael.thompson@trade.gov*.

SUPPLEMENTARY INFORMATION: The Department of Commerce published a final rule on September 15, 2021 (86 FR 51456), establishing a Concrete Masonry Products Research, Education, and Promotion Order, as authorized by the Concrete Masonry Products Research, Education, and Promotion Act of 2018. The final rule incorrectly reported the email address found in the For Further Information Contact section of the rule. Please see the corrected email address in the **FOR FURTHER INFORMATION CONTACT** section of this correction.

Dated: September 30, 2021.

Kenneth White,

Senior Policy Analyst, Under Secretary for Economic Affairs.

[FR Doc. 2021–21788 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2018–C–0617]

Listing of Color Additives Exempt From Certification; Silver Nitrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the safe use of silver nitrate as a color additive in professional-use only cosmetics to color eyebrows and eyelashes. This action is in response to a color additive petition (CAP) filed by GW Cosmetics GmbH.

DATES: This rule is effective November 8, 2021. See section VIII for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing on the final rule by November 5, 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 November 5, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 5, 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–2018–C–0617 for ''Listing of Color Additives Exempt from Certification; Silver Nitrate.'' 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: Rachel Morissette, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1212.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of March 7, 2018 (83 FR 9715), we announced that we filed a color additive petition (CAP 8C0312) submitted by GW Cosmetics GmbH (GW), c/o EAS Consulting Group, LLC, 1700 Diagonal Rd., Suite 750, Alexandria, VA 22314. The petition and its supporting documents proposed to amend the color additive regulations in part 73 (21 CFR part 73), *Listing of Color Additives Exempt from Certification,* to provide for the safe use of silver nitrate as a color additive, at a level of up to 4 percent by weight in the final product, in professional-use only cosmetics to color eyebrows and eyelashes in persons age 16 and older.

Silver nitrate is a highly purified inorganic compound obtained as the recrystallized precipitate from the concentrated reaction mixture of silver and excess nitric acid at elevated temperatures, followed by drying the decanted, filtered, and washed crystals. Silver nitrate has the chemical formula $AgNO_3$. Although silver nitrate is colorless, when it comes into contact with argentaffin, the melanin-rich protein filaments in the hair, it is reduced to black-brown metallic silver, which remains in the filaments (Ref. 1). GW formulates the silver nitrate into a viscous gel, which limits migration of the gel components into the eye during and after the application procedure, thereby minimizing potential extraneous staining or irritation.

II. Safety Evaluation

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(b)(4)), a color additive cannot be listed for a proposed use unless the data and information available to FDA establish that the color additive is safe for that use. Our color additive regulations in § 70.3(i) (21 CFR 70.3(i)) define ''safe'' to mean that there is convincing evidence establishing with reasonable certainty that no harm will result from the intended use of the color additive. As part of our safety evaluation to establish with reasonable certainty that a color additive is not harmful under its intended conditions of use, we consider the color additive's manufacturing and stability; the projected human exposure to the color additive and any impurities resulting from the petitioned use of the color additive; the additive's toxicological data; and other relevant information (such as published literature) available to us.

A. Estimated Dermal Exposure

To support the safety of the intended use of silver nitrate, GW provided estimates of the systemic exposure to silver from the petitioned use of silver nitrate using various published dermal absorption values. However, as we explain in a separate memorandum (Ref. 2), we consider the most comprehensive measure of skin penetration of silver to come from a recent published mass

balance percutaneous penetration study that determined the distribution of silver penetrating the different layers of human skin (Ref. 3). Therefore, we used these published dermal absorption values, expressed as a dermal absorption percentage of the amount of silver applied, and assumptions made in GW's exposure estimate, to estimate that the dermal exposure to silver from the intended use of silver nitrate would be 0.15 micrograms (µg) silver/person (p)/day (d) per application. Since the exposure to silver could also be affected by the duration of the silver nitrate's contact with the skin at the application site, we further refined the exposure based on an exaggerated upper-bound application time of 3 minutes (Ref. 2). Thus, the maximum estimated dermal exposure to silver from the intended use of silver nitrate to color eyebrows and eyelashes is estimated to be 0.3 nanograms (ng)/p/d per application and exposure to silver nitrate is estimated to be 0.5 ng/p/d per application (Ref. 2).

B. Acceptable Intake Level for Silver

In the evaluation of the safe use of an ingredient or substance that can be absorbed systemically (*e.g.,* a color additive for use in a cosmetic), we consider overall probable exposure (Ref. 4). We calculated the oral cumulative estimated daily intake (CEDI) of silver to be 72 µg/p/d in our previous evaluations (Ref. 5). The conservative estimate of systemic exposure to silver from its color additive use in a high-viscosity gel formulation applied to eyebrows and eyelashes (0.3 ng/p/d per application) is approximately 0.0004 percent of the CEDI (Ref. 4). However, the systemic exposure to silver is likely to be far less than the estimate of 0.3 ng/p/d per application due to three default factors and assumptions used in that estimate. First, a dermal retention factor of 0.1 (10 percent) for a ''leave-on'' (*i.e.,* not intended to be rinsed off) product was used, although excess gel is intended to be removed as directed; second, a 20 percent skin ''reach'' factor (*i.e.,* 20 percent of the applied silver nitrate gel is in contact with the skin) was used, though this number is likely much less, provided the gel is thoroughly removed from the eyebrows or eyelashes as directed; and third, a 1 in 10 day use factor was used, which is likely to be conservative when considering exposure over a lifetime. For example, GW notes that the coloring effects should last up to 6 weeks. Therefore, if an individual decreases their use from once every 10 days to once every 2 weeks, there would be a 30 percent decrease in the exposure to silver. Furthermore, silver binds tightly to protein and would not be expected to transfer from the protein in the hair follicles (Ref. 4).

Considering the very low percentage (0.0004 percent) of the CEDI represented by our estimated systemic exposure from the intended use of silver nitrate as a color additive for dyeing eyebrows and eyelashes, and the likelihood that probable systemic exposure to silver is orders of magnitude lower than the 0.3 ng/p/d per application estimate, we conclude that the exposure to silver from the petitioned intended use is negligible, and it does not impact the CEDI of silver (Ref. 4).

C. Toxicological Considerations

To establish that silver nitrate is safe for use as a color additive to color eyebrows and eyelashes, GW provided data from two in vitro ocular irritation assays conducted with the proposed silver nitrate gel. Both of these in vitro studies, using colorimetric measurements as predictors of ocular irritancy, indicate that the silver nitrate gel product contains severe eye irritating ingredient(s). However, the color of this product interferes with colorimetric measurement portion of these studies, limiting the utility of these studies to non-colorimetric dependent portions of the assessment. Colorimetric results cannot be used to determine the ocular irritancy of a colorant such as silver nitrate; therefore, the assays provided only limited value to the current safety assessment. Nevertheless, the color of silver nitrate does not affect the histological assessment portion included in one of the in vitro studies. The histopathological results from one in vitro assay performed on bovine corneas treated with the silver nitrate gel did not reveal any significant physical effects or potential for damage, even following a 10-minute continuous exposure with full immersion (Refs. 5 and 6). In comparison, GW's proposed upper-bound application time of the silver nitrate gel is only 3 minutes. Additionally, the viscosity of the silver nitrate gel formulation limits entry into the eye during and after application to eyelashes. The ocular exposure to silver nitrate would be incidental and would initiate ocular tearing, which would dilute the silver nitrate concentration (Ref. 6). Additionally, we are requiring the instruction ''Rinse eyes immediately if product comes into contact with them'' on the label of cosmetic products containing this color additive. We expect this instruction will further minimize the chances of potential harm. Therefore, we expect no permanent ocular damage (Ref. 6).

GW also submitted results from a single-application, intended-use study in human subjects. The study included a pretreatment step with a preparation gel not containing silver nitrate to open hair cuticles prior to application of GW's silver nitrate gel to both eyebrows and eyelashes. During and after the study, only two adverse effects were identified in a limited number of users, which included burning sensations in the eyes (most occurrences were ''slight'' in degree and lasted less than 1 minute after the removal of the product, as self-reported by the study subjects) and skin staining primarily beneath the eyebrows (which was infrequent). We also found no clinically significant findings related to the eye (Ref. 7), which is consistent with the corneal histopathology findings. Based on these results, we conclude that potential ocular irritancy (*i.e.,* burning sensations) and skin staining present minimal risks to safety. Furthermore, we expect they will be mitigated by statements required to be on the label of a cosmetic product containing silver nitrate. See 21 CFR 73.2550(d)(2).

This final rule includes an age use limitation to help ensure that professionals apply silver nitrate cosmetics only to individuals with fully mature facial size and structural development. The human eye and associated structures generally reach full adult size and structural development by 12 years of age. Therefore, limiting the age use to 16 years and older provides a safety margin for those few individuals whose facial size and structures might not have fully developed by age 12 (Ref. 7).

This final rule includes a restriction on distribution or direct sale to consumers and a professional-use only limitation to increase the likelihood that professionals who are trained in and knowledgeable about applying cosmetics will apply the silver nitrate product. ''Professional'' in this rule means an individual who, as part of an occupation, is permitted by the jurisdiction in which the individual practices to apply cosmetics for dyeing eyebrows and eyelashes.

This final rule includes a limited application time to limit the amount of any potential systemic absorption of the silver nitrate. Silver nitrate absorption in the skin is time dependent; therefore, limiting the skin contact time will result in a negligible level of systemic absorption. We did not identify any evidence suggesting that GW's intended conditions of use of silver nitrate are of toxicological concern (Ref. 6).

Based on the totality of the safety data and our conclusion that the systemic

exposure to silver nitrate under the conditions of use is negligible, we conclude that there is a reasonable certainty of no harm from the intended use of silver nitrate in professional-use only cosmetics to color eyebrows and eyelashes of persons age 16 and older at a level of up to 4 percent by weight in the final product. To mitigate the risk of adverse effects from the use of silver nitrate in these cosmetic products, the labeling of the cosmetic product must include statements about the potential ocular irritancy and skin staining, an age use limitation, professional-use only designation, and limited application time.

III. Response to Comment

We received two comments in response to our filing of the color additive petition. One comment, however, did not address silver nitrate or color additives. The other comment claimed that the assumption that only trained beauticians or cosmetologists will be applying this product to consumers poses public health concerns because States have their own requirements regarding the licensure of makeup artists. The comment also stated that applying this product to the eyes and the surrounding area poses serious health concerns. The comment claimed that silver nitrate is considered highly toxic and that the gel containing the silver nitrate will travel down the hair shaft directly onto the skin and into the eye.

Regarding the professional-use only status of the product, we acknowledge that FDA does not regulate the professional practice of applying those cosmetics to consumers. This final rule includes a professional-use only limitation, along with a restriction on distribution or direct sale to consumers, to increase the likelihood that professionals who are trained in and knowledgeable about applying cosmetics will apply the silver nitrate product. As explained above, we reviewed data and information to establish that silver nitrate when applied as a gel under the conditions described herein is safe for its intended use. As demonstrated in the testing conditions that were described in the submitted petition, the silver nitrate gel product, when applied as intended, was not toxic and did not result in ocular damage. In this case, the intended use of silver nitrate is in specific professional-use only cosmetics, and we have determined that this intended use is safe.

Regarding the safety of applying this product to the eyes and the surrounding areas, we have determined, as explained in the discussion of our safety evaluation, that the intended use of silver nitrate as a color additive in certain cosmetic products is safe.

IV. Conclusion

FDA reviewed the data and information in the petition, and other available relevant material, and determined the petitioned use of silver nitrate, at a level of up to 4 percent by weight in the final viscous gel product, in professional-use only cosmetics to color eyebrows and eyelashes is safe. We further conclude that the color additive will achieve its intended technical effect and is suitable for the petitioned use. Consequently, we are amending the color additive regulations in part 73 to provide for the safe use of this color additive as set forth in this document. In addition, based upon the factors listed in 21 CFR 71.20(b), we conclude that certification of silver nitrate is not necessary for the protection of public health.

V. Public Disclosure

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, we will delete from the documents any materials that are not available for public disclosure.

VI. Analysis of Environmental Impact

We considered the environmental effects of this rule, as stated in the March 7, 2018, **Federal Register** notice of petition for CAP 8C0312. We have concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. We did not receive any new information or comments that would affect this determination. Our finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. 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**.

IX. 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. Memorandum from N. Hepp, Color Technology Branch, Office of Cosmetics and Colors, Center for Food Safety and Applied Nutrition (CFSAN), FDA to R. Morissette, Regulatory Review Branch (RRB), DFI, OFAS, CFSAN, FDA, September 10, 2021.

*2. Memorandum from H. Lee, Chemistry Review Branch (CRB), Division of Food Ingredients (DFI), Office of Food Additive Safety (OFAS), CFSAN, FDA to

R. Morissette, RRB, DFI, OFAS, CFSAN, FDA, June 22, 2021.
3. Kraeling, M.E.K., V.D. Topping, Z.M. Keltner, et al. ''In Vitro Percutaneous Penetration of Silver Nanoparticles in Pig and Human Skin.'' *Regulatory Toxicology and Pharmacology* (2018) 95: 314–322.
*4. Memorandum from M. DiNovi, OFAS, CFSAN, FDA to R. Morissette, RRB, DFI, OFAS, CFSAN, FDA, June 22, 2021.
*5. Memorandum from A. GonzalezBonet, CRB, Division of Food Contact Substances, OFAS, CFSAN, FDA to M. Swain, CRB, DFI, OFAS, CFSAN, FDA, April 7, 2017.
*6. Memorandum from M. Wyatt, Cosmetics Division, Office of Cosmetics and Colors, CFSAN, FDA to R. Morissette, RRB, DFI, OFAS, CFSAN, FDA, September 10, 2021.
*7. Memorandum from W. Chambers, Ophthalmology, Office of New Drugs, Center for Drug Evaluation and Research, FDA to R. Morissette, RRB, DFI, OFAS, CFSAN, FDA, September 2, 2021.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Add § 73.2550 to read as follows:

§ 73.2550 Silver nitrate.

(a) *Identity.* The color additive silver nitrate is a purified inorganic compound obtained as the recrystallized precipitate from the concentrated reaction mixture of silver and excess nitric acid at elevated temperatures, followed by drying the decanted, filtered, and washed crystals. The color additive has the chemical formula $AgNO_3$.

(b) *Specifications.* Silver nitrate shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

(1) Arsenic, not more than 3 milligrams/kilogram (mg/kg) (3 parts per million (ppm)).

(2) Cadmium, not more than 5 mg/kg (5 ppm).

(3) Lead, not more than 10 mg/kg (10 ppm).

(4) Mercury, not more than 1 mg/kg (1 ppm).

(5) Volatile matter, calculated as water, not more than 0.1 percent.

(6) Total color, not less than 99.9 percent.

(c) *Uses and restrictions.* The color additive silver nitrate may be safely used in externally applied professional-use only cosmetics intended to impart color to the eyebrows and eyelashes subject to the following restrictions:

(1) The amount of silver nitrate in the cosmetic product shall not be more than 4 percent by weight.

(2) The viscosity of the cosmetic formulation shall be not less than 120 Pascal-seconds (Pa·s) and not more than 180 Pa·s at normal temperature and pressure.

(3) The cosmetic containing silver nitrate is not intended for use on persons under the age of 16.

(4) Application of the cosmetic containing silver nitrate is not intended to exceed 1 minute and is intended to be followed by immediate removal.

(5) The cosmetic containing silver nitrate is applied by a professional.

(6) The cosmetic containing silver nitrate is not distributed or directly sold to consumers.

(d) *Labeling requirements.* (1) The label of the color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter and include adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The label of any cosmetic containing the color additive silver nitrate, in addition to other information required by law, shall contain the following statements: Contains silver nitrate. Silver nitrate may permanently stain skin with which it comes into contact. Silver nitrate may irritate the eyes. For application by professionals only for dyeing eyebrows and eyelashes, in accordance with the directions for use. Not for use on persons under the age of 16. Apply to eyebrows and eyelashes for no more than 1 minute, followed by immediate removal. Rinse eyes immediately if product comes into contact with them. Consult a physician if any irritation persists. Not for distribution or direct sale to consumers.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act.

Dated: September 30, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21755 Filed 10–5–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 6

[Docket No. PTO–T–2021–0041]

RIN 0651–AD57

International Trademark Classification Changes

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) issues this final rule to incorporate classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement). These changes are listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification), which is published by the World Intellectual Property Organization (WIPO), and will become effective on January 1, 2022.

DATES: This rule is effective on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at 571–272–8946, or by email at *TMPolicy@uspto.gov*.

SUPPLEMENTARY INFORMATION:

Purpose: As noted above, this final rule incorporates classification changes adopted by the Nice Agreement that will become effective on January 1, 2022. Specifically, this rule adds new goods to, or deletes existing goods from, two class headings to further define the types of goods appropriate to the class.

Summary of Major Provisions: The USPTO is revising § 6.1 of 37 CFR part 6 to incorporate classification changes and modifications, as listed in the Nice Classification (11th ed., ver. 2022), published by WIPO, that will become effective on January 1, 2022.

The Nice Agreement is a multilateral treaty, administered by WIPO, that establishes the international classification of goods and services for the purposes of registering trademarks

and service marks. As of September 1, 1973, this international classification system is the controlling system used by the United States, and it applies, for all statutory purposes, to all applications filed on or after September 1, 1973, and their resulting registrations. *See* 37 CFR 2.85(a). Every signatory to the Nice Agreement must utilize the international classification system.

Each state party to the Nice Agreement is represented in the Committee of Experts of the Nice Union (Committee of Experts), which meets annually to vote on proposed changes to the Nice Classification. Any state that is a party to the Nice Agreement may submit proposals for consideration by the other members of the Committee of Experts, in accordance with agreed-upon rules of procedure. Proposals are currently submitted on an annual basis to an electronic forum on the WIPO website, commented upon, modified, and compiled by WIPO for further discussion and voting at the annual Committee of Experts meeting.

In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions, which are published electronically and enter into force on January 1 each year, are referred to as versions and identified by edition number and the year of the effective date (*e.g.,* ''Nice Classification, 10th edition, version 2013'' or ''NCL 10–2013''). Each annual version includes all changes adopted by the Committee of Experts since the adoption of the previous version. The changes consist of: (1) The addition of new goods and services to, and deletion of goods and services from, the Alphabetical List, and (2) any modifications to the wording in the Alphabetical List, the class headings, and the explanatory notes that do not involve the transfer of goods or services from one class to another.

Beginning on January 1, 2023, new editions of the Nice Classification will be published electronically every three years and include all changes adopted since the previous annual version, as well as goods or services transferred from one class to another or new classes that have been created since the previous edition.

Due to the worldwide impact of COVID–19, the International Bureau (IB) at WIPO announced on March 16, 2021, that the 31st session of the Committee of Experts would be held in a hybrid format, with WIPO participating at the WIPO headquarters in Geneva and states participating via an online platform. The annual revisions contained in this final rule consist of modifications to the class headings that were incorporated into the Nice Agreement through e-voting during the 31st session of the Committee of Experts, from April 19–23, 2021. Under the Nice Classification, there are 34 classes of goods and 11 classes of services, each with a class heading. Class headings generally indicate the fields to which goods and services belong. Specifically, this rule adds new goods to, or deletes existing goods from, two class headings, as set forth in the discussion of regulatory changes below. The changes to the class headings further define the types of goods appropriate to the class. As a signatory to the Nice Agreement, the United States adopts these revisions pursuant to article 1.

Discussion of Regulatory Changes

The USPTO is revising § 6.1 as follows:

In Class 30, the wording ''artificial coffee'' is amended to ''substitutes therefor.''

In Class 32, the wording ''non-alcoholic'' is deleted after ''other.'' The wording ''non-alcoholic'' is added after ''making.''

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 97 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 575 U.S. at 101 (Notice and comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))).

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a

significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: This final rule does not involve information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 6

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1112, 1123 and 35 U.S.C. 2, as amended, the USPTO is amending part 6 of title 37 as follows:

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

■ 1. The authority citation for part 6 continues to read as follows:

Authority: Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 6.1 to read as follows:

§ 6.1 International schedule of classes of goods and services.

Goods

1. Chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fire extinguishing and fire prevention compositions; tempering and soldering preparations; substances for tanning animal skins and hides; adhesives for use in industry; putties and other paste fillers; compost, manures, fertilizers; biological preparations for use in industry and science.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants, dyes; inks for printing, marking and engraving; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

3. Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations.

4. Industrial oils and greases, wax; lubricants; dust absorbing, wetting and binding compositions; fuels and illuminants; candles and wicks for lighting.

5. Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes.

7. Machines, machine tools, power-operated tools; motors and engines, except for land vehicles; machine coupling and transmission components, except for land vehicles; agricultural implements, other than hand-operated hand tools; incubators for eggs; automatic vending machines.

8. Hand tools and implements, hand-operated; cutlery; side arms, except firearms; razors.

9. Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or

analogue recording and storage media; mechanisms for coin-operated apparatus; cash registers, calculating devices; computers and computer peripheral devices; diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for persons with disabilities; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

11. Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

15. Musical instruments; music stands and stands for musical instruments; conductors' batons.

16. Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

17. Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

18. Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

19. Materials, not of metal, for building and construction; rigid pipes, not of metal, for building; asphalt, pitch, tar and bitumen; transportable buildings, not of metal; monuments, not of metal.

20. Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

21. Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

22. Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

23. Yarns and threads for textile use.

24. Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

25. Clothing, footwear, headwear.

26. Lace, braid and embroidery, and haberdashery ribbons and bows; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings, not of textile.

28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yogurt and other milk products; oils and fats for food.

30. Coffee, tea, cocoa and substitutes therefor; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

32. Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other preparations for making non-alcoholic beverages.

33. Alcoholic beverages, except beers; alcoholic preparations for making beverages.

34. Tobacco and tobacco substitutes; cigarettes and cigars; electronic cigarettes and oral vaporizers for smokers; smokers' articles; matches.

Services

35. Advertising; business management, organization and administration; office functions.

36. Financial, monetary and banking services; insurance services; real estate affairs.

37. Construction services; installation and repair services; mining extraction, oil and gas drilling.

38. Telecommunications services.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services; food and drink preservation.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, aquaculture, horticulture and forestry services.

45. Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals.

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021–21495 Filed 10–5–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0447; FRL–9006–02–R4]

Air Plan Approval; MS; BART SIP and Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two Mississippi State Implementation Plan (SIP) revisions from the Mississippi Department of Environmental Quality (MDEQ) dated October 4, 2018, and August 13, 2020. The October 4, 2018, SIP revision contains the State's first periodic report describing progress towards reasonable progress goals (RPGs) established for regional haze and contains the associated determination that the State's regional haze SIP is adequate to meet these RPGs for the first implementation period (Progress Report). The August 13, 2020, SIP revision addresses best available retrofit technology (BART) determinations for 14 electric generating units (EGUs) (BART SIP). These EGUs were initially addressed in EPA's prior limited approval and limited disapproval actions on Mississippi's regional haze SIP because of deficiencies arising from the State's reliance on the Clean Air Interstate Rule (CAIR) to satisfy certain regional haze requirements. EPA is approving the BART SIP and finds that it corrects the deficiencies that led to the limited approval and limited disapproval of the State's regional haze SIP. EPA is therefore withdrawing the limited disapproval of Mississippi's regional haze SIP and replacing the prior limited approval with a full approval of the regional haze SIP as meeting all regional haze requirements of the Clean Air Act (CAA or Act) for the first implementation period. EPA is also approving the Progress Report and associated adequacy determination.

DATES: This rule is effective November 5, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0447. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 can either be retrieved electronically through *www.regulations.gov* or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via telephone at (404) 562–9031 or electronic mail at *notarianni.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particulate matter ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$ which impairs visibility by scattering and absorbing light. Visibility impairment (*i.e.,* light scattering) reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects (including premature death, heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms) and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, anthropogenic impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I federal areas. Congress added section 169B to the CAA in 1990 to further address regional haze issues, and EPA subsequently promulgated the Regional Haze Rule (RHR).[1] The RHR established a requirement to submit a regional haze SIP which applies to all 50 states, the District of Columbia, and the Virgin Islands.[2] Each jurisdiction was required to submit a SIP addressing regional haze requirements for the first implementation period no later than December 17, 2007.[3]

B. BART

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards natural visibility conditions, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate ''Best Available Retrofit Technology'' as determined by the state. On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (BART Guidelines) to assist states in the BART evaluation process. Under the RHR and the BART Guidelines, the BART evaluation process consists of three steps: (1) An identification of all BART-eligible sources, (2) an assessment of whether the BART-eligible sources are subject to BART, and (3) a determination of the BART controls.[4] States must conduct BART determinations for all BART-eligible sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area, or in the alternative, adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is generally encouraged, but not required, to follow the BART Guidelines in other aspects.

On September 22, 2008, Mississippi submitted a SIP revision to address regional haze in Class I areas impacted by emissions from the State and subsequently amended that submittal on May 9, 2011. EPA finalized a limited approval and a limited disapproval of Mississippi's regional haze SIP in June 2012 because of deficiencies in the regional haze SIP arising from the

[1] *See* 64 FR 35713 (July 1, 1990).

[2] *See* 40 CFR 51.300(b).

[3] *See* 40 CFR 51.308(b).

[4] *See* 40 CFR 51.308(e); BART Guidelines, section I.F.

State's reliance on CAIR as an alternative to BART for the State's BART-eligible EGUs.[5] *See* 77 FR 38191 (June 27, 2012) (limited approval); 77 FR 33642 (June 7, 2012) (limited disapproval). In the limited disapproval action, EPA did not subject Mississippi to a Federal Implementation Plan (FIP). Mississippi had requested that EPA not issue a FIP and instead provide the State with additional time to correct the deficiencies in its regional haze SIP through a SIP revision.[6]

Through a letter dated April 23, 2020,[7] Mississippi submitted a draft SIP revision addressing BART for 14 EGUs formerly subject to CAIR (draft BART SIP) to EPA for parallel processing and provided public notice for comment on the same date. The State's public comment period closed on May 23, 2020. Mississippi submitted its final BART SIP to EPA on August 13, 2020.

C. Regional Haze Progress Report

The RHR requires each state to submit progress reports that evaluate progress towards the RPGs [8] for each mandatory Class I area within the state and for each Class I area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). In addition, the provisions of 40 CFR 51.308(h) require each state to submit, at the same time as each progress report, a determination of the adequacy of the state's existing regional haze plan. The first progress report is due five years after submittal of the initial regional haze plan and must be submitted as a SIP revision. Mississippi submitted its progress report for the first implementation period and a determination of the adequacy of the State's existing regional haze plan to EPA on October 4, 2018.[9]

D. EPA's Notice of Proposed Rulemaking (NPRM)

In a NPRM published on August 4, 2020 (85 FR 47134), EPA proposed to approve Mississippi's draft BART SIP via parallel processing. Contingent on the Agency finalizing its proposal to approve the BART SIP, EPA also proposed to approve the Progress Report under 40 CFR 51.308(g) and the State's determination of adequacy under 40 CFR 51.308(h). The details of these submissions and the rationale for EPA's proposed approval of the two submissions are further explained in the NPRM. Subsequently, Mississippi submitted its final BART SIP on August 13, 2020, and EPA has concluded that there are no significant changes between the draft and final BART SIPs that warrant a different approach at the final rule stage.[10]

The comment period for the NPRM originally closed on September 3, 2020. EPA reopened the comment period until October 5, 2020, based on a request from Sierra Club for visibility modeling files related to the NPRM and for a 30-day extension.[11]

II. Response to Comments

EPA received one set of adverse comments from Sierra Club and the National Parks Conservation Association (hereinafter collectively referred to as the ''Commenter'') regarding the proposed approval of Mississippi's BART SIP. These comments are included in the docket for this rulemaking. EPA has summarized the comments and provided responses below.[12]

Comment 1: The Commenter asserts that EPA cannot approve Mississippi's BART SIP because neither the Agency nor the State reviewed the visibility modeling used to exempt every EGU in Mississippi from BART. The Commenter then focuses on Mississippi Power Company—Plant Daniel (Plant Daniel), claiming that EPA admits it has not verified the visibility modeling analyses for this facility and that EPA could not have verified the analyses because the Agency does not possess any of the underlying modeling files. The Commenter also argues that EPA violated CAA section 307(d) by failing to include the modeling files in the rulemaking docket.

Response 1: EPA disagrees with the Commenter. In formulating the NPRM, EPA had received from MDEQ all of the modeling files needed to thoroughly review the visibility modeling analyses for all six operational BART-eligible facilities,[13] including Plant Daniel, to assess whether these sources are subject to BART. For each facility, EPA reviewed these modeling files as well as the BART exemption modeling report included in the BART SIP, MDEQ's exemption analysis, the modeling protocol for each facility,[14] and the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) Modeling Protocol.[15] Based upon EPA's thorough review of these documents and modeling files, the Agency proposed to approve the SIP submission.

The Commenter is correct that EPA does not possess the meteorological data input files (meteorological files) used in the modeling. However, this did not affect EPA's ability to meaningfully review the SIP for several reasons. First, MDEQ provided EPA with all of the other input and output files used in the visibility modeling. The Agency, by analyzing the model input and output files that MDEQ did provide, was able to confirm that the modeling used the correct meteorological data and VISTAS meteorological domain.[16] Thus, EPA did not need to review the meteorological files.

Second, the meteorological files used here were standard files originally developed for VISTAS. They were used

[5] The State's analysis of reasonable progress controls was not dependent on CAIR, and thus, was not affected by CAIR's invalidation. *See* 77 FR 11879, 11888 (February 28, 2012) (finding that no controls were necessary for reasonable progress given the areas of influence and consultation with neighboring states).

[6] *See* 77 FR 33654.

[7] EPA received MDEQ's April 23, 2020, draft BART SIP on April 24, 2020.

[8] An RPG is a visibility goal for a Class I area, in deciviews (dv), as of the end of an implementation period, that provides for reasonable progress towards achieving natural visibility conditions. There are two RPGs for each Class I area for an implementation period: one for the most impaired days and one for the clearest days.

[9] EPA received Mississippi's Progress Report on October 15, 2018.

[10] The changes between the draft and final BART SIP submissions include: Different transmittal letters, proof of adoption in the final BART SIP dated August 13, 2020, and the addition of Appendix M: *Comments and Responses* to provide a summary of responses to public comments and EPA's comments. In response to EPA comments, MDEQ made changes which expanded on Appendix R in the Table of Contents, clarified the emissions units in Table 2, updated the values in Table L.2.3, and added the source of the data used in Tables L.2.2, L.5.2, L.6.2, and L.7.2. The final BART SIP satisfies the completeness criteria in 40 CFR part 51, Appendix V.

[11] *See* 85 FR 58319 (September 18, 2020).

[12] EPA did not receive any adverse comments on the Agency's proposed approval of the Progress Report.

[13] The BART-eligible emissions units at Cooperative Energy (formerly South Mississippi Electric Power Association)—Plant Morrow (Plant Morrow) were permanently retired on November 17, 2018; therefore, MDEQ did not perform visibility modeling analyses for the facility. *See* Appendix L.4 of the BART SIP.

[14] The modeling protocols for each of the six operational facilities are included in Appendix L of the BART SIP.

[15] The VISTAS states, including Mississippi, developed a ''Protocol for the Application of CALPUFF for BART Analyses'' (VISTAS BART Modeling Protocol). Mississippi, in coordination with VISTAS, used this modeling protocol to apply CALPUFF to determine whether individual sources in Mississippi were subject to BART. The VISTAS BART Modeling Protocol, December 22, 2005, Revision 3.2 (August 31, 2006), is included in Appendix L.8 of the BART SIP. EPA approved Mississippi's use of this modeling protocol in 2012. *See* 77 FR 11879, 11888–89 (February 28, 2012) (proposal) and 77 FR 38191 (June 27, 2012) (final).

[16] One of the CALPUFF model output files identifies, among other things, the names of the meteorological data files, format of the files (binary), data years, coordinate system, meteorological grid cell spacing (four kilometers as specified by the VISTAS modeling protocol), and the number of vertical layers used in the meteorological input files.

by the states in Region 4 to support their regional haze SIPs during the first implementation period and continue to be used by many facilities in the southeastern United States for major source preconstruction permit modeling. To date, EPA has already approved numerous SIPs relying on the same files. Thus, these were not new data files specifically developed by these BART-eligible sources that would merit additional scrutiny.

Third, to the extent the Commenter thinks that EPA should scrutinize the meteorological files every time it reviews visibility modeling conducted for a haze SIP, EPA disagrees. The Act vests the Agency with discretion in reaching its technical determinations as well as in how to best marshal its limited resources to meet statutory mandates. Based on EPA's long experience with visibility and preconstruction permit modeling, the Agency generally does not believe that re-assessing standard meteorological files every time they are used by a state or source is the best use of scarce Agency resources. Furthermore, the Commenter has not alleged, much less demonstrated, any deficiency with the meteorological files.

EPA also disagrees with Commenter's claim that EPA violated CAA section 307(d) by not placing the modeling files in the docket. To begin with, CAA section 307(d) does not apply to this SIP action at all. *See* CAA section 307(d)(1) (expressly listing actions to which CAA section 307(d) applies and not including SIPs). Thus, the Commenter's claim lacks merit.

In any event, the Commenter does not and cannot claim any prejudice as a result of the alleged deficiency. EPA did not post the modeling files to the electronic docket for the proposed rulemaking because the majority of these files are a file type that is not on the list of acceptable file types for upload into the Federal Docket Management System (FDMS).[17] However, the NPRM provided EPA contacts that the public could reach out to for further information, and the Commenter requested the input files for Plant Daniel from the listed EPA contacts during the initial 30-day public comment period. EPA promptly provided the Commenter with all the files in its possession and worked with MDEQ to obtain the meteorological files. Due to the limited amount of time remaining in the comment period after the Commenter received the meteorological files, the Commenter requested an extension of the comment period for an additional 30 days. EPA granted the request, affording the Commenter ample time to review the files and perform its own modeling.[18]

Comment 2: The Commenter states that EPA cannot approve MDEQ's determination that Plant Daniel is not subject to BART because that determination is based on unenforceable emissions reductions and an unjustified 2015–2018 emissions baseline in lieu of the 2001–2003 baseline the Commenter prefers. The Commenter advances several supporting arguments. First, the Commenter contends that the BART SIP must contain enforceable BART emission limitations for the facility pursuant to CAA sections 110(a)(2) and 110(k)(3), section 51.308(d)(3) of the RHR, and sections IV and V of the BART Guidelines.

Second, citing to section IV.D.4.d of the BART Guidelines, the Commenter asserts that the emissions baseline should represent a realistic depiction of anticipated annual emissions and, if a utility projects that future operating parameters will differ from past practice and the projection has a deciding effect in the BART determination, those operating parameters or assumptions must be enforceable limitations in the SIP. The Commenter then argues that the baseline used in the Plant Daniel BART modeling analysis is improper because it accounts for flue gas desulfurization (FGD) systems on Units 1 and 2 that are not associated with federally enforceable emission limitations commensurate with BART. The Commenter states that MDEQ's email regarding the enforceability of the FGD emissions limitations identified in Plant Daniel's title V permit application is focused solely on SO_2 and is conclusory, vague, unenforceable, and insufficient to create an enforceable emissions limit for determining whether Plant Daniel is subject to BART.

Third, the Commenter further asserts that the baseline used in Plant Daniel's modeling is improper because it is inconsistent with the RHR's provision regarding baseline visibility conditions and the facility's potential emissions. According to the Commenter, the RHR requires states to determine baseline visibility conditions using a 2000–2004 emissions baseline and it is nonsensical to use a baseline from nearly two decades later.

Finally, the Commenter also claims that the 2015–2018 baseline is arbitrary and capricious as it does not realistically depict potential impacts from Plant Daniel because the facility's capacity factor has steadily dropped since 2015. The Commenter argues that the emissions reductions due to this reduced capacity are not enforceable, and therefore, should not serve as the emissions baseline for the purposes of determining whether the facility is subject to BART.

Response 2: EPA disagrees with the Commenter. The CAA, RHR, and BART Guidelines do not require the result the Commenter seeks. Under the CAA's cooperative federalism framework, states have the primary responsibility for implementing federal standards by promulgating SIPs, and EPA must approve SIP revisions that meet CAA requirements. The CAA and RHR require states to classify a BART-eligible source as a BART-subject source if it may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I federal area, but they do not set forth any specific, additional criteria for determining whether a source is subject to BART.[19] For states that do not choose to treat all BART-eligible sources as BART-subject sources, section III of the BART Guidelines provides recommendations on how to determine which BART-eligible sources are subject to BART. The recommendations address, among other things, how to establish a contribution threshold, what kind of modeling to use, how to develop a modeling protocol, and the selection of an emissions baseline for states such as Mississippi that opt to use an individual source attribution approach. They do not, however, recommend or require that the emissions baseline correspond to enforceable limitations.

Here, Mississippi used the 24-hour average actual emission rate from the highest emitting day over a three-year period from 2015 to 2018, after the source installed new control equipment for SO_2. As explained further below, EPA believes this was a reasonable

[17] There are two files related to the BART SIP modeling that are technically compatible with FDMS (which is the interface for federal employees to upload files to display at *www.regulations.gov*) but were not posted to the electronic docket. EPA did not upload these two files to FDMS because they are integral to the entire set of modeling files and therefore are maintained with the remaining modeling files. The Agency's management of the BART SIP modeling files is consistent with Region 4's standard practice.

[18] *See* 85 FR 58319 (September 18, 2020). The Commenter did not allege any errors in the modeling input files other than the NO_X and SO_2 emission rates and used all of the input files (with revisions to the NO_X and SO_2 emissions rates as noted in Exhibit A to its comments) in its modeling. The NO_X and SO_2 emissions rates, moreover, were included in Appendix L.3 of the BART SIP which was part of the docket at the time of the proposal. See also Comments and Responses 2 and 3 for additional information and analysis regarding the NO_X and SO_2 emissions rates.

[19] *See* CAA section 169A; 40 CFR 51.308(e).

choice. More generally, EPA has reviewed Mississippi's BART exemption determination for Plant Daniel and concluded that Mississippi reasonably exercised the discretion provided by the CAA and RHR. Therefore, EPA must approve Mississippi's BART SIP revision as it relates to Plant Daniel.[20]

EPA now addresses and rejects the Commenter's supporting arguments. First, contrary to the Commenter's assertions, the CAA, RHR, and the BART Guidelines do not require a subject-to-BART determination to be based on enforceable emissions limits or reductions. The CAA sections cited by the Commenter are general SIP provisions that do not specifically address subject-to-BART determinations. Section 110(a)(2)(A) generally requires a SIP to contain enforceable limitations and other control measures to meet the applicable requirements of the Act. As the Commenter notes, this obligation only applies with respect to measures that are ''necessary or appropriate to meet the applicable requirements'' of the Act, but the provision does not otherwise define the scope of the applicable requirements to which it applies.

The portion of sections 110(a)(2)(C) that the Commenter refers to requires states to demonstrate, in developing infrastructure SIPs, that the state has statutes, regulations, or other provisions that provide for the enforcement of emission limitations included in the SIP pursuant to other applicable requirements of the Act.[21] Similarly, section 110(a)(2)(E) requires that states have adequate personnel, funding, and authority to adequately implement the provisions of the SIP that are included pursuant to other applicable requirements of the Act.[22] The Commenter has not alleged that the State provides inadequate enforcement or implementation of its existing SIP provisions.

Section 110(k)(3) requires EPA to approve SIP revisions that meet all applicable requirements of the Act, but it also does not define the parameters of the applicable requirements of the Act. In fact, none of these sections address whether SIPs must contain enforceable limits to support subject-to-BART determinations. To the contrary, CAA section 169A(b)(2) directly addresses this issue and requires SIP limits only for BART-eligible sources that ''may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area. These sources are ''subject to BART.'' *See* 40 CFR 51.308(e)(1)(ii); *see also* BART Guidelines at section III (providing guidelines for determining which sources are subject to BART). For these sources, the State must conduct a BART determination and impose SIP limits representing BART. *See* CAA section 169A(b)(2); 40 CFR 51.308(e), (e)(1)(ii). Conversely, a source that is not reasonably anticipated to cause or contribute to visibility impairment is not subject to BART, and there is thus no need for either a BART determination or corresponding enforceable emission limits. As the NPRM and this final rulemaking notice explain, Plant Daniel is not subject to BART, and therefore, does not need enforceable limits that represent BART.

The provisions of the RHR and BART Guidelines cited by the Commenter are also inapplicable because they only address sources that are subject to BART. The Commenter cites generally to 40 CFR 51.308(d)(3), which requires each regional haze SIP to contain a long-term strategy (LTS). The LTS is the compilation of all control measures a state will use during the implementation period of the SIP submittal to meet any applicable RPGs. Although the LTS must include BART emissions limits, Plant Daniel is not subject to BART. Thus, Plant Daniel does not have any BART emissions limits that must be included in the LTS. *See* 40 CFR 51.308(e), (e)(1)(ii) (requiring limits representing BART only for sources that are subject to BART).

Similarly, the Commenter's reliance on sections IV and V of the BART Guidelines is misplaced. Section IV of the BART Guidelines addresses BART determinations (*i.e.,* the analysis of BART options for subject-to-BART sources). Section V addresses how enforceable limits reflecting BART are to be established. Both sections, however, deal specifically with sources that are subject to BART. Plant Daniel, as already noted, is not subject to BART, and thus, these sections of the BART Guidelines are inapposite. By contrast, section III, which the Commenter conspicuously neglects to cite, specifically addresses how to determine whether a source is subject to BART and recommends the use of actual, not enforceable, emissions levels.

The Commenter's allegations regarding section IV.D.4.d of the BART Guidelines is misplaced for the same reason. As just explained, that portion of the Guidelines only applies to sources that are subject to BART, and Plant Daniel is not subject to BART. In addition, even if section IV.D.4.d of the BART Guidelines was applicable to subject-to-BART determinations, it would not preclude the baseline approach used for Plant Daniel because that baseline relies on past actual emissions from 2015–2018, not on future operating parameters. *See* 82 FR 60520, 60533–34 (December 21, 2017) (explaining that use of recent actual emissions data is consistent with BART Guidelines section IV.D.4.d); Nat'l Parks Conservation Ass'n v. EPA, 788 F.3d 1134, 1143 (9th Cir. 2015) (upholding EPA's use of 2008–2010 emissions notwithstanding the lack of corresponding enforceable limitations because they reflected ''a realistic depiction of anticipated annual emissions for the source'').

The Commenter's assertion that the Plant Daniel subject-to-BART evaluation must use a 2000–2004 emissions baseline is also based on inapplicable provisions of the RHR. The 2000–2004 period established in 40 CFR 51.308(d)(2)(i) is the baseline for purposes of measuring reasonable progress at Class I areas. Neither the RHR nor the BART Guidelines requires the use of this particular timeframe as the baseline for a subject-to-BART determination.

Finally, EPA disagrees that Mississippi's use of the 2015–2018 baseline for Plant Daniel was arbitrary and capricious. The three-year period relied on by the State, from October 1, 2015, through September 30, 2018, was a reasonable exercise of discretion for three reasons. First, while the Commenter takes issue with the potential for an increased annual capacity factor in the future, the visibility modeling is not based on the annual capacity factor, but rather based on the maximum daily emissions over a three-year time period. The model is run for every day over a three-year period using the same maximum day emissions. Based on these daily model

[20] EPA generally treats all of the Commenter's comments regarding the subject-to-BART determinations as going to the application of the CAA, RHR, and BART Guidelines in this SIP action. To the extent the Commenter is trying to collaterally attack the RHR or BART Guidelines themselves, those challenges are all beyond the scope of this rulemaking. *See Sierra Club* v. *EPA,* 939 F.3d 649, 678–79 (5th Cir. 2019), reh'g denied (Dec. 9, 2019).

[21] Memorandum from Stephen D. Page, Director of Office of Air Quality Planning and Standards, to Regional Air Directors, Regions 1–10, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' pp. 23–24 (Sept. 13, 2013).

[22] *Id.* at pp. 39–44. The Commenter's citation to the language from section 110(a)(2)(E) requiring the State to bear ''responsibility for ensuring adequate implementation'' of the SIP is particularly inapt as that language refers to specific circumstances where the state relies on a local or regional government, agency, or instrumentality for the implementation of a particular SIP provision. The Commenter has not alleged that the State has abdicated this responsibility in any way.

results, the model estimates the 98th percentile highest visibility impacts for each year. Then, the highest of the three yearly 98th percentile impacts, or the 22nd highest visibility impact over the three years, whichever is more conservative, is compared to the state's BART contribution threshold, which is 0.5 dv for Mississippi. Since the highest daily emissions are used for each day in the modeling, the Commenter fails to allege how an increase in capacity factor here would affect the maximum daily emissions or the visibility modeling results. In any event, the Commenter's suggestion that emissions might increase in the future is beside the point; as already noted, the BART Guidelines specifically recommend the use of past actual emissions data.

Second, the emissions data used was from the most recent three years when the modeling was conducted. That is, the source did not cherry pick data from three years of low emissions, but simply used the most recent data from after the FGD was installed and operating.

Third, prior to the start of the modeled period, the facility had installed control equipment for the purposes of complying with legal requirements outside of the regional haze program. Specifically, Plant Daniel installed low NO_X burners on Units 1 and 2 in 2008 and 2010, respectively, to ensure compliance with CAIR,[23] and later installed FGD on these units in 2015 to comply with EPA's Mercury and Air Toxics Standards (MATS). Plant Daniel's federally-enforceable title V permit[24] requires compliance with MATS[25] and applicable New Source Performance Standard (NSPS)[26] emissions limits for SO_2, and Acid Rain Program[27] and applicable NSPS[28] emissions limits for NO_X.[29] The operation of the above equipment has resulted in significant emissions reductions that reduced visibility impacts at the Breton Wilderness Area (Breton). The State chose to use an emissions baseline with data beginning shortly after the most recent emission control equipment, FGD, was installed. EPA is, moreover, not aware of evidence that any of these controls will be removed in the future.

Given the above facts, EPA believes the State's decision to use the more recent baseline was reasonable. *Cf.* Nat'l Parks Conservation Ass'n v. EPA, 788 F.3d 1134, 1143 (9th Cir. 2015) (approving EPA's decision to rely on a more recent, albeit unenforceable, emissions baseline in determining BART where there was ''no reason to believe that [the source] would change course and remove the additional combustion controls it had already installed'').

Comment 3: The Commenter contends that the modeling underlying the Plant Daniel BART exemption analysis demonstrates that the source should be subject to BART using a corrected emissions baseline. The Commenter asserts that Plant Daniel excluded several days in May and November 2017 with high SO_2 emissions from the emissions baseline on the grounds that they were attributable to startup, shutdown, and malfunction (SSM) events. The Commenter claims that these days should have been included in the modeling baseline because they are not associated with SSM events and are not identified in the facility's MATS compliance reports.

The Commenter conducted its own BART exemption modeling for Units 1 and 2 at Plant Daniel using emissions input data from 2015–2018 that includes the excluded days. Using the revised emissions input data, the existing modeling protocol, and the 2001–2003 meteorological modeling inputs, the Commenter's revised CALPUFF modeling predicts that the visibility impact at Breton from Units 1 and 2 at Plant Daniel using the 8th highest (98th percentile) day is 0.55 dv, exceeding Mississippi's 0.5 dv subject-to-BART contribution threshold. According to the Commenter, the modeling results also show that visibility impairment due to Plant Daniel during most of the high impact days is dominated by nitrates which underscores the need to evaluate NO_X BART for the facility. The Commenter also ran the model using emissions from 2001–2003 and concluded that the modeled visibility impact using the 8th highest day from Units 1 and 2 exceeds 2.5 dv at Breton.

Response 3: EPA does not agree that the emissions baseline used in the BART modeling needs to be corrected as suggested by the Commenter. Although the Commenter is correct that certain excluded high-emission days were not associated with SSM, the State nonetheless reasonably excluded these days because they did not ''reflect steady-state operating conditions during periods of high capacity utilization.''[30] Rather, the source was temporarily testing new coal blends on these days, and thus, experienced atypical and higher than normal emissions during this time.[31]

Regarding the excluded days in May and November 2017 referenced by the Commenter, the BART SIP does not identify these dates as SSM. The BART modeling protocol for Plant Daniel, located in Appendix L.3.2 of the BART SIP, states that the modeled emissions excluded ''startup, shutdown, or other nonrepresentative operations, etc.'' as identified in Appendix E of the protocol. Table E–1 of the protocol, titled ''Summary of Days with Nonrepresentative Emissions,'' lists the days between October 1, 2015, to September 30, 2018, with periods of nonrepresentative operations and

[23] See the Prevention of Significant Determination permit applications dated May 4, 2009, and January 22, 2008, for Plant Daniel Units 1 and 2, respectively, at page 1 of the ''APPLICATION OVERVIEW'' section (page 3 of the pdf file) for each application. These applications are included in the docket for this rulemaking.

[24] MDEQ issued a title V permit to Plant Daniel containing MATS limits on December 31, 2020, after publication of the NPRM. *See* State of Mississippi Air Pollution Control Title V Permit No. 1280–00090 (Plant Daniel Title V Permit) which is included in the docket for this rulemaking. The Commenter's arguments regarding the enforceability of the title V permit application are therefore moot.

[25] The permit requires compliance with a SO_2 alternative emissions limit under MATS for hydrochloric acid of 0.20 pounds of SO_2 per million British thermal units (lbs/MMBtu) (input based) or 1.5 lbs/megawatt-hour (output based) (rolling 30-boiler operating day average) for Units 1 and 2. *See* Plant Daniel Title V Permit Section 3.B.11 (citing 40 CFR 63.9991(a)(1), 63.10000(a) and (b), and Table 2, subpart UUUUU).

[26] The permit requires compliance with a SO_2 limit of 1.2 lbs/MMBtu heat input when firing coal alone or with wood residue or a ≤ng/J value obtained from the equation in Condition 3.B.8 when firing a combination of fuels (rolling 3-hour average) for Units 1 and 2. *See* id. at Section 3.B.8 (citing 40 CFR 60.43(a)(2) and (b), subpart D). The permit also requires compliance with the applicable requirements of 40 CFR part 60, subparts A and D regarding SO_2 (Section 3.B.5) and SO_2 allowances for Units 1 and 2 under the Acid Rain Program (Sections 3.B.35, 8, and Appendix C (citing 40 CFR parts 72–78)).

[27] Under the permit's Acid Rain Program conditions, NO_X emissions from Units 1 and 2 shall not exceed the annual average alternative contemporaneous emission limitation of 0.45 lbs/MMBtu, Unit 1 has an annual heat input limit of 20,000,000 MMBtu, and Unit 2 has an annual heat input limit of 15,000,000 MMBtu. *See* id. at Sections 3.B.35, 8, and Appendix C (citing 40 CFR parts 72–78).

[28] The permit requires compliance with a NO_X (expressed as nitrogen dioxide) limit of 0.70 lbs/MMBtu heat input when firing coal alone or with wood residue or ≤ng/J value obtained from the equation in Condition 3.B.9 when firing a combination of fuels (rolling 3-hour average) for Units 1 and 2. *See* id. at Section 3.B.9 (citing 40 CFR 60.44(a)(3) and (b), subpart D). The permit also requires compliance with the applicable requirements of 40 CFR part 60, subparts A and D regarding NO_X. *See* id. at Section 3.B.5.

[29] The permit also requires compliance with the Cross-State Air Pollution Rule (CSAPR) NO_X Ozone Group 2 Trading Program. *See* id. at Sections 3.B.36 and 9.

[30] *See* BART Guidelines, section III.

[31] See the file named ''Plant Daniel Regional Haze BART Info Request-Response'' (Plant Daniel Information Response) attached to MDEQ's December 9, 2020, email to EPA. The email and attachment are included in the docket for this rulemaking.

describes the nature of the operations. Dates associated with startups, malfunctions, and shakedowns are marked accordingly whereas the operations on the excluded days in May and November 2017 are described as ''test burn/additional FGD pumps not in operation'' or ''test burn/OFA damper not tuned'' (test burn days).[32]

EPA obtained clarification from Mississippi Power via MDEQ that the company excluded the test burn days in May and November 2017 from the model because they represent atypical operations, not SSM.[33] On the days in Table E–1 marked with a test burn entry, Plant Daniel tested blending Powder River Basin subbituminous coal with Illinois Basin bituminous coal to determine the effects of the test coal blends on boiler operations and auxiliary equipment. In order to obtain baseline data on the impacts of these test coal blends on unit operations, Plant Daniel did not optimize the boiler, the emission controls, and the auxiliary equipment for extended operation with these test blends. If Plant Daniel were to use the test coal blends as part of normal operations, the source avers that the boiler and auxiliary equipment would be tuned appropriately, resulting in lower SO_2 and NO_X emission rates than those experienced during the tests.

The Commenter correctly noted that the source also did not identify these days on its MATS compliance reports as test burn days. The MATS compliance reporting asks facilities to answer, ''Did the facility burn new types of fuel during the reporting period?'' and the source answered ''No.'' This was because there was no change in fuel type. MATS defines ''fuel type'' as ''each category of fuels that share a common name or classification'' (*e.g.,* bituminous coal, subbituminous coal);[34] Plant Daniel burns a blend of bituminous (West Elk) and subbituminous (Powder River Basin) coal during normal operations;[35] and the facility burned a blend of the same fuel types—bituminous and subbituminous coal—on the test burn days. In other words, although the source changed the coal blend it burned, it did not change the ''fuel type'' as defined by MATS.

Excluding the test burn days from the BART exemption modeling is consistent with the BART Guidelines and the VISTAS BART Modeling Protocol because they do not represent normal operations. The BART Guidelines state that ''emissions estimates used in the models are intended to reflect *steady-state operating conditions* during periods of high capacity utilization.''[36] Although the Guidelines go on to specifically discourage the use of emissions reflecting SSM, SSM is only one example of an event that does not represent steady-state operating conditions where ''such emission rates could produce higher than normal effects than would be typical of most facilities.'' Further, the VISTAS BART Modeling Protocol states that ''source emissions should be defined using the maximum 24-hour actual emission rate *during normal operation* for the most recent 3 or 5 years'' for CALPUFF modeling.[37] The Plant Daniel modeling protocol in Appendix L.3.2 of the BART SIP explains that the modeling excluded the days identified in Table E–1 pursuant to the BART Guidelines because those days included periods of nonrepresentative operations.[38] Based on the information submitted by Plant Daniel and MDEQ, EPA believes that MDEQ reasonably concluded that the test burn days do not represent steady-state operations, and thus, appropriately excluded them from the modeling analysis consistent with EPA's BART Guidelines and the VISTAS BART Modeling Protocol.

Regarding the Commenter's assertion that modeled visibility impairment due to Plant Daniel at Breton is dominated by nitrates which underscores the need to evaluate NO_X BART, the dominance of one visibility impairing pollutant over another at a Class I area is irrelevant to a subject-to-BART determination. If the total modeled visibility impairment from a source due to NO_X, SO_2, and PM combined meets or exceeds Mississippi's BART contribution threshold, the source is subject-to-BART. In this instance, MDEQ determined that Plant Daniel is not subject-to-BART based on modeling the visibility impacts of all three pollutants (including NO_X), and therefore, no BART determination is required for NO_X, SO_2, or PM.[39]

Regarding the Commenter's use of a 2001–2003 baseline emissions period, EPA disagrees that the State was required to use that specific period for modeling visibility impacts. The State reasonably determined that the facility's use of the 2015–2018 updated baseline period reflecting operation of new SO_2 and NO_X controls is appropriate, as discussed in Response 2.

Comment 4: The Commenter claims that although Plant Daniel is regularly able to achieve SO_2 emission rates as low as 0.03 lbs/MMBtu, spikes up to 0.6 to 0.8 lbs/MMBtu indicate that the facility operates its FGD systems periodically or inefficiently. According to the Commenter, the spikes appear to be the result of occasional scrubber bypass and an unlawful failure to impose a federally enforceable requirement to continually achieve an emissions limit commensurate with BART.

Response 4: As discussed in the NPRM and this notice, Plant Daniel is not subject to BART, and therefore, no BART emissions limits are required. Furthermore, as discussed in Responses 2 and 3, Mississippi reasonably exercised its discretion in selecting the 2015–2018 baseline for the subject-to-BART modeling for Plant Daniel and excluding the spikes associated with the test burn days. EPA has nonetheless evaluated the Commenter's assertions that Plant Daniel is experiencing spikes in its SO_2 emission rates due to alleged scrubber inefficiency or intermittent scrubber operation.

The majority of the spikes shown in Figure 2 of the Commenter's October 5, 2020, submission occurred after the baseline period ended on September 30, 2018.[40] EPA requested supplemental

[32] *See* Appendix L.3.2.3 at p. E–2. Table E–1 on p. E–2 does not include August 22, 2018, where data was substituted for two hours (8:00–9:00 p.m. and 10:00–11:00 p.m.) for Unit 1. According to EPA's Field Audit Checklist Tool (*https://www.epa.gov/airmarkets/field-audit-checklist-tool-fact*) these hours were associated with startup.

[33] See Plant Daniel Information Response.

[34] *See* 40 CFR 63.10042 (''Fuel type means each category of fuels that share a common name or classification. Examples include, but are not limited to, bituminous coal, subbituminous coal, lignite, anthracite, biomass, and residual oil. Individual fuel types received from different suppliers are not considered new fuel types.'').

[35] The MATS compliance reports provided by the Commenter list bituminous and subbituminous coal and No. 2 fuel oil as the fuels burned in Units 1 and 2.

[36] *See* BART Guidelines, Section III.A.3 (emphasis added) (discussing the kind of modeling used to determine which sources and pollutants need not be subject to BART).

[37] *See* VISTAS BART Modeling Protocol at p. S–3 (emphasis added) and p. 43.

[38] *See* Appendix L.3.2.3 at p. E–2. The protocol also states that a total of 25 out of 834 days (2.9 percent) were excluded for SO_2 and 6 out of 834 days (0.7 percent) were excluded for NO_X. Id.

[39] EPA notes that the 2009–2018 IMPROVE monitoring data indicates that sulfates are the predominant pollutant at Breton on the most impaired days. For example, for the period 2014–18, the most recent 5-year period with available data, sulfates accounted for approximately 64 percent of the visibility impairment at Breton on the most impaired days whereas nitrates accounted for only approximately 10 percent of the impairment. This data is available at *http://vista.cira.colostate.edu/Improve/*.

[40] The spikes in Figure 2 that occurred during the baseline period and are associated with nonrepresentative emissions are explained in Table E–1 of the Plant Daniel BART Modeling Protocol with the exception of the spikes on August 22, 2018, where the facility substituted data for two hours at 8:00–9:00 p.m. and 10:00–11:00 p.m. for

Continued

information from MDEQ regarding these post-baseline period spikes, and in response, Mississippi Power explained that the spikes beginning in the third quarter of 2018 do not reflect actual SO_2 emissions because they are the result of data substitution in accordance with 40 CFR 75.33 and Appendix A to 40 CFR part 75 (Specifications and Test Procedures) due to FGD bypasses during malfunction/emergency events.[41] The bypasses were infrequent (less than one percent of unit operating time) and short in duration (less than two hours). Due to the short duration of each bypass, the bypass continuous emission monitoring system (CEMS) did not have time to calibrate and provide valid emissions data. A combination of short duration events beginning in September 2018 and associated CEMS data invalidation resulted in CEMS availability dropping below 90 percent, triggering data substitution requirements under Part 75. Part 75 requires data to be substituted at the maximum potential concentration when CEMS availability is less than 90 percent, resulting in the spikes shown on Figure 2 beginning in the third quarter of 2018.[42] Mississippi Power affirmed in its response that it operates the FGD systems efficiently and at all times, except during SSM events,[43] and notes that MATS requires continuous operation of the FGD system.[44]

Comment 5: The Commenter argues that Mississippi's BART SIP arbitrarily fails to address BART for NO_X emissions from EGUs and that the State cannot rely on CSAPR as a BART alternative. The Commenter claims that Mississippi has not corrected its SIP to formally adopt CSAPR in lieu of source-specific BART for NO_X emissions so that it could rely on CSAPR as a BART alternative and claims that CSAPR is not a valid BART alternative for the following reasons. First, Mississippi cannot exempt Plant Daniel from NO_X BART without going through the BART exemption process, the State has not demonstrated that Plant Daniel meets the BART exemption requirements, and the State has not obtained the concurrence of the Federal Land Managers (FLMs) to exempt the source from BART. Second, the CSAPR ''Better than BART'' (CSAPR BTB) rule is flawed because it evaluated CSAPR allocations that are more stringent than now required, used presumptive BART limits that are less stringent than required under the statute, and failed to account for uncertainties in emissions reductions under CSAPR. Third, the CSAPR BTB rule is no longer valid given the substantial changes in CSAPR allocations and compliance deadlines, including the United States Court of Appeals for the District of Columbia Circuit's (D.C. Circuit's) 2015 invalidation of certain states' emission budgets and EPA's withdrawal of Texas from the CSAPR trading program. Fourth, NO_X emissions from Mississippi's EGUs are only covered by CSAPR during the ozone season, and therefore, CSAPR does not protect Breton and other Class I areas during the remaining seven months of the year. The Commenter attached comments submitted by Earthjustice, National Parks Conservation Association, and Sierra Club on the CSAPR BTB rule.

Response 5: Mississippi did not rely on CSAPR BTB in its SIP submission, nor does EPA rely on CSAPR BTB in the Agency's approval. Therefore, all comments addressing the State's or EPA's application of CSAPR BTB in this SIP action are incorrect. Moreover, EPA did not purport to revisit CSAPR BTB in this action. All comments generally addressing the validity of CSAPR BTB are therefore beyond the scope. EPA notes that the Commenter's general claims regarding CSAPR BTB have been and are being addressed in separate proceedings.[45] Finally, to the extent the Commenter is asserting that the sole mechanism by which Plant Daniel can be exempted from BART is under CAA section 169A(c), that is incorrect. *See* Am. Corn Growers Ass'n v. EPA, 291 F.3d 1, 8 (D.C. Cir. 2002) (rejecting this argument). The subject-to-BART assessment provides a separate method for exempting BART-eligible sources such as Plant Daniel.

III. Final Action

Based on the rationale articulated in the NPRM and in this final rule, EPA is approving the August 13, 2020, BART SIP and finds that it corrects the deficiencies that led to the limited approval and limited disapproval of the State's regional haze SIP. EPA is therefore withdrawing the limited disapproval of the regional haze SIP and replacing the prior limited approval with a full approval of the regional haze SIP as meeting all regional haze requirements of the CAA for the first implementation period. EPA is also approving Mississippi's October 4, 2018, Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and the State's determination of adequacy under 40 CFR 51.308(h).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

Unit 1 due to startup. As discussed in Response 3, Table E–1 identifies days with nonrepresentative emissions associated with SSM and test burns. The table also identifies days with nonrepresentative emissions associated with the shakedown of the FGD systems. Control system shakedowns occur over a limited period of time following installation and, among other things, are used to identify any potential installation problems and to ensure that the new system is operating properly. Therefore, the shakedowns identified in Table E–1 are not evidence of inefficient or routine FGD operation.

[41] *See* Plant Daniel Information Response.

[42] *See* 40 CFR part 75, Appendix A, Section 2.1—*Instrument Span and Range.*

[43] Elsewhere, Mississippi Power also acknowledges that it did not optimize its scrubber operation on test burn days in order to determine the effects of test coal blends on facility operations. See Response 3.

[44] The MATS rule requires continuous operation of the FGD system if the source chooses to comply with the SO_2 surrogate standard. *See* 40 CFR 63.9991(c)(2). *See generally* 40 CFR Subpart UUUUU.

[45] *See, e.g.,* Nat'l Parks Conservation Ass'n v. EPA, Nos. 17–1253, 20–1341 (D.C. Cir.); 82 FR 45481 (September 29, 2017) (2017 rule affirming that CSAPR remains better-than-BART after the changes made to CSAPR's geographic scope due to the 2015 D.C. Circuit decision cited by the Commenter); EPA's June 29, 2020, denial of the Commenter's petition for reconsideration of the 2017 Rule, available at *https://www.epa.gov/sites/production/files/2020-06/documents/csapr_btb_petition_denial_sierra_club_06-29-20.pdf* and *https://www.epa.gov/sites/production/files/2020-06/documents/csapr_btb_petition_denial_npca_06-29-20_0.pdf.*

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 29, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Z—Mississippi

■ 2. In § 52.1270 amend the table in paragraph (e) by adding entries for ''Regional Haze Progress Report'' and ''BART SIP'' at the end of the table to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA Approved Mississippi Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	*	*
Regional Haze Progress Report	Mississippi	10/4/2018	10/6/2021, [Insert citation of publication].	
BART SIP	Mississippi	8/13/2020	10/6/2021, [Insert citation of publication].	

§ 52.1279 [Amended]

■ 3. Section 52.1279 is amended by removing and reserving paragraph (a).

[FR Doc. 2021–21562 Filed 10–5–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1304

RIN 0970–AC85

Flexibility for Head Start Designation Renewals in Certain Emergencies

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule adopts as final the provision to the Head Start Program Performance Standards (HSPPS) to establish parameters by which ACF may make designation renewal determinations during a federally declared major disaster, emergency, or public health emergency (PHE) and in the absence of all normally required data.

DATES: Effective October 6, 2021, the interim final rule published December 7, 2020, at 85 FR 78792, is adopted as final.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, at *HeadStart@eclkc.info* or 1–866–763–6481. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

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I. Statutory Authority

ACF publishes this final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by sections 641(a), which describes the Secretary's authority to designate a local public or private nonprofit agency as a Head Start agency; 641(c), which lays out the requirements for the system for designation renewal; and 644(c), which directs the Secretary to prescribe rules or regulations for Head Start agencies, of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134).

II. Executive Summary

The Improving Head Start for School Readiness Act of 2007 (the 2007 Reauthorization) of the Head Start Act (the Act) required ACF to establish a system for determining whether Head Start (including Early Head Start) grantees are delivering high-quality and comprehensive services to the children and families they serve. In 2011, ACF issued a regulation (76 FR 70009) to establish the Designation Renewal System (DRS) to meet this requirement. Under the DRS, all Head Start grants were transitioned from indefinite to 5-year grant periods, and any grant that meets one or more of seven specified conditions during the 5-year project period is subject to an open competition for continued funding. Any Head Start grant that does not meet one of the seven DRS conditions becomes eligible for a new noncompetitive 5-year grant. The Act lays out the types of data that must be considered as part of these DRS determinations. Three of the seven conditions of the DRS were revised through a final rule published on August 28, 2020 (85 FR 53189). Due to the ongoing 2019 Novel Coronavirus (COVID–19) pandemic, the ability of ACF to collect all data on grants required for making determinations under the DRS has been severely impaired. This issue is described further in the following paragraph. Furthermore, there may be major disasters, emergencies, or PHEs in the future that similarly impact ACF's ability to collect all information required for making DRS determinations.

Therefore, ACF adopts as final the interim rule, published December 7, 2020, at 85 FR 78792 that added a new section to the HSPPS regulation under Part 1304 Subpart B, Designation Renewal. This section, § 1304.17, established parameters by which ACF may make a designation renewal determination when certain federally declared emergencies prevent collection of all normally required data. As with COVID–19, a major disaster or emergency declared by the President under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5191) or another PHE declared by the Secretary under section 319 of the Public Health Service Act (42 U.S.C. 247d) may necessitate extended, unanticipated program closures or temporary shifts to different program models or service delivery mechanisms, which can make certain monitoring or data collection activities unsafe, impossible, and/or invalid. In these situations, ACF may lack certain required data to make designation renewal determinations. In cases where a grantee's 5-year grant is ending and all required data are not available due to the impacts of a federally declared disaster or emergency, § 1304.17 allows ACF to still determine if an open competition is required, or if the grant may be renewed noncompetitively based on the conditions for which ACF has data. Without § 1304.17, ACF would not be able to make DRS determinations, which could result in the loss of critical Head Start services in impacted communities.

In response to the ongoing COVID–19 PHE, ACF has established through the interim final rule a process by which ACF will meet the requirements of the Act to make designation renewal determinations while ensuring the safety of Head Start program staff, children, and families. As Head Start grants approach the end of their 5-year grant periods during the ongoing COVID–19 pandemic, ACF must make a determination under the DRS for these grantees to either receive a new 5-year grant noncompetitively or to require an open competition. Extended program closures for in-person Head Start services due to the PHE have made, and continue to make, it impossible for ACF to collect certain data elements relevant to the seven DRS conditions and required as part of designation renewal determinations. In the absence of a DRS determination, these communities could be left without any Head Start services during a particularly challenging time for the children and families Head Start programs serve. To ensure children and families do not lose access to Head Start services during a federally declared disaster or emergency, now and in the future, this final rule is needed to establish the process by which DRS determinations will be made under these circumstances.

Ensuring the health and safety of Head Start staff, children, and families is of utmost importance. This final rule directly supports that goal, while finalizing a process for ACF to meet the requirements of the Act to make designation renewal determinations during the COVID–19 pandemic and certain other federally declared disasters or emergencies. Due to the ongoing PHE, ACF found good cause to waive notice and comment rulemaking and instead publish an IFR effective upon publication. It would have been contrary to the public interest to delay the flexibility to make DRS determinations with the data available and to ensure the continuity of critical Head Start services in impacted communities. This final rule considers and responds to public comments received on the IFR.

III. Background

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten more prepared to succeed in school. Through the 2007 Reauthorization, Congress required HHS to ensure these children receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the DRS to (1) identify Head Start grantees delivering a high-quality and comprehensive Head Start program that could receive funding noncompetitively for a 5-year period, and grantees not delivering a high-quality and comprehensive Head Start program that will be required to compete for continued funding, and (2) transition all grants from indefinite grants to 5-year grant periods. Congress required that decisions about which grantees would have to compete be based on budget and fiscal management data (including annual audits), program monitoring reviews, classroom quality—and in particular teacher-child interactions—as measured by a valid

and reliable research-based observational instrument, and other program information.

In 2011, HHS published a final rule to establish the DRS that included seven conditions. Grants that met one or more of the seven conditions would have their funding subject to an open competition for the next 5-year grant period. Grantees that did not meet a condition became eligible to receive a new noncompetitive 5-year grant. Following the transition of all grants from indefinite to 5-year project periods and considering available data and research, a 2020 final rule [1] revised the DRS and made changes to three of the seven DRS conditions. Effective November 9, 2020, Head Start grants that meet one or more of the following seven conditions under the DRS are subject to an open competition: (1) Two or more deficiencies under section 641A(c)(1)(A), (C), or (D) of the Act; (2) failure to establish, use, and analyze children's progress on agency-established school readiness goals; (3) scores below competitive thresholds in any of the three domains of the Classroom Assessment Scoring System: Pre-K (CLASS); (4) revocation of a license to operate a center or program; (5) suspension from the program; (6) debarment from receiving federal or state funds or disqualification from the Child and Adult Care Food Program (CACFP); and/or (7) either an audit finding of being at risk for failing to continue as a ''going concern,'' or two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.

The notice and comment process for the 2020 final rule predated the COVID–19 pandemic. In the 2019 notice of proposed rulemaking on the DRS, HHS did not propose any flexibilities within the DRS to make designation renewal determinations in the absence of certain data related to the seven conditions due to a federally declared major disaster, emergency, or PHE. Therefore, these flexibilities could not be included in the DRS final rule that was published on August 28, 2020.

IV. Provisions of the Final Rule

All Head Start grants now operate on a 5-year project period. As a cohort of Head Start grants conclude their 5-year grant period, ACF must make a determination whether grants may be renewed noncompetitively or if they will be subject to an open competition. The Act requires ACF to consider a number of factors in making a designation renewal determination. As described previously, a federally declared major disaster or emergency or PHE can make it unsafe or impossible to collect some of these required data on grants. In particular with the COVID–19 pandemic, ACF has been, and continues to be, unable to collect data from a valid, reliable, research-based, observational measure of classroom quality as required by the Act. The reasons for this are further elaborated in the following paragraph. It is possible that future disasters or emergencies could also preclude ACF from collecting other required data elements necessary for DRS determinations.

ACF meets the requirement in the Act to use a valid, reliable, research-based, observational measure of classroom quality as part of DRS determinations through the administration of the CLASS. The CLASS measures the quality of teacher-child interactions on a 7-point scale in three areas or domains: Emotional Support, Classroom Organization, and Instructional Support. As part of the established ACF monitoring process for Head Start grantees, trained reviewers administer the CLASS on-site in a sample of Head Start classrooms for each grant. The scores for each classroom within a grant are then averaged to create grant-level scores. If a grant receives an average CLASS score below the following competitive thresholds for any of the three CLASS domains, the grant is designated for competition under the DRS: a 5 for Emotional Support, 5 for Classroom Organization, and 2.3 for Instructional Support.[2] Each year, ACF schedules a subset of Head Start grantees for CLASS reviews, depending on where in the 5-year project period each grant is. The completion of these CLASS reviews within a certain window of time is critical to ensure ACF can complete the necessary subsequent steps for each grant, to determine and notify the grantee of their status as either competitive or noncompetitive under the DRS with sufficient time prior to the end of their current 5-year project period to run the necessary competitive processes.

In March 2020, ACF made the decision to temporarily suspend the administration of CLASS reviews in Head Start classrooms due to the COVID–19 PHE. At that time, ACF was concerned about jeopardizing the health and safety of Head Start children and staff by sending outside observers into Head Start classrooms to conduct CLASS reviews. Most Head Start classrooms across the country closed for some time due to increased health and safety concerns amid the spread of COVID–19. More than 90 percent of programs closed in spring 2020. Due to the evolving nature of the COVID–19 pandemic, ACF was uncertain about the ability to resume CLASS reviews during the 2020–2021 program year. Therefore, in an information memorandum directed to Head Start and Early Head Start grantees published on September 24, 2020, ACF announced the decision to suspend all CLASS reviews for the 2020–2021 program year.[3]

There are multiple factors that informed this decision. First, as the impacts of the COVID–19 pandemic vary significantly in different parts of the country, Head Start programs must make locally determined decisions regarding whether they can safely operate in-person services for children and families. Programs that do not operate in-person services for a period of time are, instead, providing some type of remote or virtual services for enrolled children and families. The CLASS tool was not originally designed to conduct observations of virtual interactions between teachers and children, and the research on such use of the tool is very limited. Therefore, if a program is closed for in-person services for an extended period due to the pandemic, and even if the program is providing virtual services, ACF cannot conduct CLASS reviews of virtual teaching for monitoring and oversight purposes with those programs.

Second, as previously mentioned, for Head Start programs that are providing in-person services to children and families during part or all of the 2020–2021 program year, ACF is not able to send additional outside individuals into classrooms to conduct CLASS observations without increasing the risk of exposing Head Start children and staff to the virus. This is consistent with best practice guidance from the Centers for Disease Control and Prevention on safely providing child care in group settings during the COVID–19 pandemic.[4]

[1] *https://www.federalregister.gov/documents/2020/08/28/2020-17746/head-start-designation-renewal-system.*

[2] As promulgated in the DRS final rule published on August 28, 2020, the competitive threshold for the instructional support domain is 2.3 for CLASS reviews conducted up through July 31, 2025, and then this threshold increases to 2.5 for CLASS reviews conducted on or after August 1, 2025.

[3] *https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-20-05.*

[4] *https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html#open.*

Finally, due to the fact that some programs are operating virtual services for part or all of their enrollment, and this has fluctuated throughout the program year, there remains a lot of uncertainty for ACF around the availability of a sufficient sample size for CLASS observations for any given grantee.

While ACF strongly believes it is still important to promote high-quality learning environments for all children served in Head Start, the health and safety of children and staff during this PHE are also paramount considerations for ACF. Therefore, ACF has made the determination that a valid and reliable observational instrument that assesses classroom quality as required by the Act does not exist during the current PHE, so ACF cannot fulfill this requirement during this time. This final rule provides ACF the flexibility to proceed with DRS determinations in the absence of CLASS data that is the result of the ongoing PHE. This final rule also provides this flexibility for a federally declared major disaster, emergency, or PHE in the future, which could also impact the administration of CLASS or the collection of other data elements necessary for making DRS determinations. The flexibility will allow ACF to ensure the continuity of critical Head Start services for the nation's most vulnerable children and families. As stated previously, ensuring high-quality classroom learning environments for enrolled children is still an important priority for ACF. ACF offers a wealth of training and technical assistance (TTA) resources to promote quality improvement in classroom learning environments and teacher-child interactions, including materials on the Early Childhood Learning Knowledge Center website, interactive webinars and learning modules, and online opportunities for grantees to share and learn about best practices with other grantees. ACF also funds a regional TTA system, which includes individualized support from regional specialists for grantees on an as-needed basis and at the discretion of each ACF region.

In summary, the provision established in § 1304.17 allows ACF to make designation renewal decisions with the data available when the determination must be made in order to ensure the continuity of Head Start services, even if certain federally declared emergencies or disasters preclude ACF from collecting all of the data required in the Head Start Act. This flexibility ensures the safety of Head Start staff, children, and families and the continuity of Head Start services.

V. Public Comments Analysis

We received five (5) unique comments on the IFR. Commenters included four individuals and one for-profit organization that developed, published, and owns the copyright to the CLASS instrument. Given the very small number of comments received on the IFR and no comments recommending changes to the specific provisions, this final rule retains the exact regulatory language from the IFR.

Comment: Four commenters expressed support for the continuation of education services during a PHE or disaster such as the COVID–19 pandemic, and a few specifically supported the flexibility provided to the Head Start program as described in the IFR.

Response: OHS appreciates these comments and agrees with the commenters regarding the importance of continuing Head Start services during a disaster or PHE. We did not make any changes to the final rule in response to these comments.

Comment: One commenter was supportive of the flexibility provided to the Head Start program in the IFR and agreed with our assessment that the CLASS tool was not designed to assess virtual interactions between teachers and children. However, the commenter suggested CLASS reviews can be conducted remotely for classrooms operating in-person, but noted that research to examine virtual applications of CLASS is ongoing to ensure valid and reliable scores from such observations. The commenter also noted that there is no relationship between the number of children in a classroom and ratings on the CLASS instrument, so scores during the COVID–19 pandemic would not be expected to be systematically different from scores at other times when program learning environments are more typical in structure and delivery. The commenter also pointed out that some states are continuing to require CLASS reviews as part of state oversight and accountability efforts during the pandemic. The commenter encouraged OHS to resume CLASS observations as soon as it is possible to do so safely, even if just in a professional development capacity, to support teachers and children as they return for in-person learning.

Response: OHS appreciates the commenter's thoughtful analysis of the application of the CLASS tool during a disaster or PHE, including promising possibilities as well as limitations of the tool. OHS appreciates the commenter's point that the number of children in a classroom at any given time does not impact the validity or reliability of scores from CLASS observations. OHS will remove that piece of the rationale for suspension of CLASS reviews described in the preamble of this final rule. However, as described in the IFR, a more salient reason for our decision to suspend CLASS reviews was because individual Head Start classrooms have had to transition from in-person to virtual services—and vice versa—at various points throughout the program year, in order to respond to the changing nature of the pandemic as well as guidance from federal, state, and local officials on best practices for delivery of education services during this time. OHS monitoring requires a certain number of classrooms within a program be part of the observations. OHS uses a documented and rigorous methodology to randomly select which classrooms within a program are part of these observations for monitoring purposes. As noted in the IFR, in many cases a sufficient sample size of a grantee's classrooms operating in-person services at any given time may not have been possible to obtain during the 2020–2021 program year.

Finally, OHS appreciates the comments regarding resumption of CLASS reviews and potential unintended consequences around alignment with state requirements related to CLASS. OHS will carefully consider these points when determining the best time for resuming CLASS reviews of Head Start programs. The continued health and safety of Head Start staff, children, and families continues to be of paramount concern to OHS. This comment did not recommend any changes to the provision, and we did not make any changes to the final rule in response to this comment.

VI. Regulatory Process Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, 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. Under this definition, some Head Start grantees may be small entities. HHS considers a

rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rule will not have a significant impact on a substantial number of small entities. During a major disaster or emergency or PHE—such as COVID–19—in which ACF is not able to collect all data elements required for DRS determinations and must exercise the flexibility set forth in § 1304.17 of the HSPPS, ACF expects there to be fewer grantees in competition for the relevant competition cycles. Therefore, ACF does not expect there to be a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA; see 2 U.S.C. 1501 *et seq.*) was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately $158 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

Federalism Assessment Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule will not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review major rules issued by federal agencies before the rules take effect (see 5 U.S.C. 802(a)). The CRA defines a ''major rule'' as one that has resulted, or is likely to result, in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers; individual industries; federal, state, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (see 5 U.S.C. Chapter 8). Based on our estimates of the impact of this rule, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has designated this rule as 'not major' under the CRA.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) seeks to minimize government-imposed burden from information collections on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The Paperwork Reduction Act defines ''information'' as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). This action does not include any new information collection requirements or changes to existing information collection requirements.

Regulatory Planning and Review Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in, Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and an ''economically significant'' regulatory action is subject to review by the Office of Management and Budget. ACF does not anticipate that this rulemaking is likely to have an impact of $100 million or more in any one year, and therefore this rule does not meet the definition of ''economically significant'' under Executive Order 12866. Executive Order 12866 provides that OIRA will review all significant rules. OIRA has determined that this final rule is significant and was accordingly reviewed by OMB.

VII. Regulatory Impact Analysis

Need for Regulatory Action

This regulatory action is necessary to provide ACF the flexibility to make determinations under the Head Start DRS, even in the absence of all required data, if this lack of data is due to a major disaster or emergency or PHE. The ongoing PHE due to COVD–19 has prevented ACF from conducting onsite observations of grantees with the CLASS tool (an observational measure of the quality teacher-child interactions in the classroom), which is required by regulation. Data from these observations provide one piece of information for determining whether a Head Start grant can be renewed noncompetitively or must compete with other potential applicants for continued funding. Several grants (60) whose 5-year project periods are ending in fiscal year (FY) 2022 would typically have their CLASS reviews completed by ACF as part of the federal monitoring process sometime during FY 2020 or FY 2021.

However, due to the PHE, ACF has not conducted CLASS reviews since March 2020 and has decided not to conduct any future CLASS reviews until at least the fall of 2021. So these 60 grants whose 5-year project periods are nearing completion do not yet have CLASS data as part of federal monitoring. Without this regulatory action, CLASS reviews for these 60 grants would have to be conducted in the fall of 2021, and several other decisions must be made by ACF after the CLASS reviews are completed but before funding can be renewed either competitive or noncompetitively. Therefore, having to conduct CLASS reviews for these grants so late in their project periods creates a strong risk of the project periods expiring before ACF can complete the grant renewal process for these 60 grants. This puts the Head Start services for enrolled children and families at great risk in the impacted service areas.

Cost Savings Analysis

There are approximately 2,200 grants in Head Start. Absent this final rule, it is estimated that 60 grants (or 3 percent) of all Head Start grants will require CLASS reviews to be conducted in FY 2022 for renewal determinations that must also be made in FY 2022. CLASS reviews would need to be conducted to acquire the necessary data to make renewal determinations as described in the Head Start Act and the HSPPS. Typically, CLASS reviews cost about $8,500 per grant to the federal government. This primarily includes the cost of travel, lodging, and wages for CLASS reviewers. The total baseline cost of the 60 CLASS reviews in FY 2022 is estimated at $510,000.

Across all Head Start grants, ACF estimates that approximately 13 percent of grants meet the CLASS condition of the DRS and are, therefore, required to compete for continued funding. If ACF applies this percentage to the 60 grants lacking CLASS data due to the COVID–19 pandemic, this results in an estimate of approximately 8 of these 60 grants that would be required to compete for continued funding due to low CLASS scores if they did have CLASS data available.

The cost for competition associated with completing a competitive application is estimated at $3,097 per applicant. This assumption includes 60 hours per competitive application at a cost of approximately $51.62 per hour in staff time (ACF multiplies an hourly wage of approximately $25.81 by two to account for fringe benefits). Applications would likely be completed by a combination of the Head Start assistant director and other managers in an early childhood program (*i.e.,* child development manager or family and community partnership manager). The average hourly wage for these positions is based on the U.S. Bureau of Labor Statistics Job Code 11–9031. ACF multiplies $3,097 per applicant by 16 to account for the eight incumbent grantees applying for funds as well as eight nonincumbent applicants for those service areas. This results in a baseline estimated cost of $49,552 for these eight grantees to complete competitive applications in FY 2022 if they did in fact have to compete, as well as eight additional applicants. The total baseline cost for conducting CLASS reviews for these 60 grants and for competition associated with eight of these 60 grants is $559,552. With this final rule, these baseline costs would not apply and are therefore cost savings in this analysis.

With this final rule, those eight grantees that would have been required to compete in FY 2022 would instead need to complete an annual grant application for a new annual award. ACF assumes it takes approximately 33 hours of staff time to complete a noncompetitive application. Using the same assumptions as above for hourly wage, ACF estimates it costs approximately $1,703 per grant to complete a noncompetitive application. ACF multiplies this by eight grants, which results in a total cost of approximately $13,624 for these grantees to complete a noncompetitive continuation application in FY 2022. Taking this cost into account, the total cost savings associated with this final rule is approximately $545,928. This includes cost savings to those entities that are not existing Head Start grantees as there would be no funding opportunity to which they would submit a competitive application.

A qualitative opportunity cost for this new rule is fewer opportunities for entities that are not existing Head Start grantees to be able to compete and potentially grow as an early childhood provider in their community, for the eight communities where grants were not designated for competition due to potentially low CLASS scores. There is also the qualitative cost of children continuing to be served by grantees who may be providing lower-quality classroom learning environments that would have led to competition. However, ACF believes there is an added benefit of existing grantees still receiving DRS determinations in a timely manner and not experiencing undue stress around the status of their grant, particularly in the midst of COVID–19, when continuity of Head Start services for children and families is critically important. Additionally, these grantees would be able to continue to access and receive support from OHS through OHS's extensive TTA system, to facilitate continued quality improvement in classroom quality care and service provision for children and families.

ACF does not believe there will be a significant economic impact from this regulatory action since the flexibility in this final rule will only be exercised when necessary. A federally declared major disaster, emergency, or PHE that limits the ability of ACF to collect all data necessary to assess programs for DRS determinations, such as the COVID–19 PHE, are rare and, therefore, ACF anticipates this flexibility will rarely be exercised. ACF also anticipates that this flexibility will be exercised in the future during more localized disasters that affect a very small subset of grantees.

This RIA analyzes a 1-year time horizon covering FY 2022. In the coming years, ACF anticipates very few grants being impacted by the provision in this final rule. However, ACF also recognizes it is difficult to predict future potential emergencies or disasters during which ACF may need to again exercise the flexibility laid out in this regulatory provision, resulting in uncertainty around potential costs and cost savings.

VIII. Tribal Consultation Statement

ACF conducts an average of five tribal consultations each year for those tribes operating Head Start and Early Head

Start. The consultations are held in four geographic areas across the country: Southwest, Northwest, Midwest (Northern and Southern), and Eastern. The consultations are often held in conjunction with other tribal meetings or conferences, to ensure the opportunity for most of the 150 tribes that operate Head Start and Early Head Start programs to be able to attend and voice their concerns about issues regarding service delivery. ACF completes a report after each consultation and then compiles a final report that summarizes the consultations and submits the report to the Secretary at the end of the year.

List of Subjects in 45 CFR Part 1304

Designation Renewal System, Classroom Assessment Scoring System (CLASS), COVID–19, Education of disadvantaged, Grant programs—social programs, Head Start, Monitoring.

■ Therefore, for the reasons discussed in the preamble, ACF adopts as final the interim rule that amended 45 CFR part 1304 on December 7, 2020 at 85 FR 78792.

Dated: September 2, 2021.

JooYeun Chang,

Acting Assistant Secretary for Children and Families.

Xavier Becerra,

Secretary.

[FR Doc. 2021–19786 Filed 10–5–21; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 18–89; FCC 20–176; FR ID 50685]

Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Connect America Fund contained in the Commission's *Second Report and Order,* FCC 20–176. This document is consistent with the *Second Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: Amendatory instruction 3 adding § 1.50004(c), (d)(1), (g), (h)(2), and (j) through (n) and amendatory instruction 5 adding § 1.50007 published at 86 FR 2904, January 13, 2021, are effective October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher Koves, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission submitted revised information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on August 3, 2021, which were approved by OMB on September 8, 2021. The information collection requirements are contained in the Commission's *Second Report and Order,* FCC 20–176 published at 86 FR 2904, January 13, 2021. The OMB Control Number is 3060–1270. If you have any comments on the burden estimates listed in the following, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060–1270, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov*.

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on September 8, 2021, for the information collection requirements contained in 47 CFR amendatory §§ instruction 3 adding 1.50004(c), (d)(1), (g), (h)(2), (j) through (n), and amendatory instruction 5 adding § 1.50007 published at 86 FR 2904, January 13, 2021. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1270.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1270.

OMB Approval Date: September 8, 2021.

OMB Expiration Date: September 30, 2024.

Title: Protecting National Security Through FCC Programs.

Form Number: FCC Form 5640 and FCC Form 5641.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 3,500 respondents; 10,250 responses.

Estimated Time per Response: 0.5–12 hours.

Frequency of Response: Annual, semi-annual and recordkeeping requirements.

Obligation to Respond: Mandatory and required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1603–1604.

Total Annual Burden: 27,400 hours.

Total Annual Cost: 1,125,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On November 22, 2019, the Commission adopted the *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order, Order, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 11423 (2019) (*Report and Order*). The *Report and Order* prohibits future use of Universal Service Fund (USF) monies to purchase, maintain, improve, modify, obtain, or otherwise support any equipment or services produced or provided by a company that poses a national security threat to the integrity of communications networks or the communications supply chain.

On March 12, 2020, the President signed into law the Secure and Trusted

Communications Networks Act of 2019 (Secure Networks Act), Public Law 116–124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609), which among other measures, directs the FCC to establish the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). This program is intended to provide funding to providers of advanced communications service for the removal, replacement and disposal of certain communications equipment and services that pose an unacceptable national security risk (*i.e.,* covered equipment and services) from their networks. The Commission has designated two entities—Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE), along with their affiliates, subsidiaries, and parents—as covered companies posing such a national security threat. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation,* PS Docket No. 19–351, Memorandum Opinion and Order, 35 FCC Rcd 14435 (2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—ZTE Designation,* PS Docket No. 19–352, Memorandum Opinion and Order, DA 20–1399 (PSHSB rel. Nov. 24, 2020).

On December 10, 2020, the Commission adopted the *Second Report and Order* implementing the Secure Networks Act, which contained certain new information collection requirements. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*Second Report and Order*). These requirements will allow the Commission to receive, review and make eligibility determinations and funding decisions on applications to participate in the Reimbursement Program that are filed by certain providers of advanced communications service. These new information collection requirements will also assist the Commission in processing funding disbursement requests and in monitoring and furthering compliance with applicable program requirements to protect against waste, fraud, and abuse.

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, appropriating $1.9 billion to ''carry out'' the Reimbursement Program and amending the Reimbursement Program eligibility requirements to expand eligibility to include providers of advanced communications service with 10 million or fewer subscribers. *See* Public Law 116–260, Division N—Additional Coronavirus Response and Relief, Title IX—Broadband internet Access Service, §§ 901, 906, 134 Stat. 1182 (2020). The Commission has interpreted the term ''provider of advanced communications service'' to mean ''facilities-based providers, whether fixed or mobile, with a broadband connection to end users with at least 200 kbps in one direction.'' *Second Report and Order,* 35 FCC Rcd at 14332, para. 111. Participation in the Reimbursement Program is voluntary but compliance with the new information collection requirements is required to obtain Reimbursement Program support.

The Secure Networks Act requires all providers of advanced communications service to annually report, with exception, on whether they have purchased, rented, leased or otherwise obtained covered communications equipment or service on or after certain dates. 47 U.S.C. 1603(d)(2)(B). The *Second Report and Order* adopted a new information collection requirement to implement this statutory mandate. *See* Secure Networks Act section 5. If the provider certifies it does not have any covered equipment and services, then the provider is not required to subsequently file an annual report, unless it later obtains covered equipment and services. *Second Report and Order* at para. 215.

The Commission therefore revises this information collection contained in the *Second Report and Order* adopted by the Commission on December 10, 2020. A previously approved information collection requirement was also eliminated as it was no longer necessary.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–21783 Filed 10–5–21; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 511, 512, 513, 514, 515, 517, 519, 522, 523, 527, 528, 529, 532, 536, 537, 538, 539, 541, 542, 543, 546, 549, 552, and 570

[GSAR Case 2017–G506; Docket No. GSA–GSAR 2021–0016; Sequence No. 1]

RIN 3090–AJ90

General Services Administration Acquisition Regulation (GSAR); Clause and Provision Designation Corrections

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule to amend the General Services Administration Acquisition Regulation (GSAR) to correct clause and provision designation and prescription errors, correct deviations and alternate identification issues, and to make other updates to the GSAR related to identification and incorporation of GSAR provisions and clauses.

DATES: Effective November 5, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, at 202–445–0390 or *gsarpolicy@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite GSAR Case 2017–G506.

SUPPLEMENTARY INFORMATION:

I. Background

As part of GSA's regulatory reform efforts, GSA has been performing a comprehensive review of the regulatory requirements in the GSAR. GSA identified designation and prescription errors related to clauses and provisions. Additionally, GSA identified GSAR clause and provision identification and incorporation issues as well as inconsistencies among deviation citations within GSAR part 552. The amendments in this case will result in conformance with Federal Acquisition Regulation (FAR) and GSAR drafting guidelines.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

The amendments to the GSAR are minor and reflect only technical edits

and editorial corrections. More specifically, this case makes several editorial amendments to GSAR clause and provision designations and prescriptions; updates the GSAR policy for using subpart 552.1, updates the GSAR policy for the identification of deviations and alternates, and updates the GSAR policy for incorporating GSAR provisions and clauses by reference; and makes additional editorial corrections related to GSAR clauses and provision prescription.

First, this case makes corrections to bring clause and provision designations and prescriptions up-to-date and in conformance with FAR and GSAR current drafting guidelines. Additionally, makes a number of editorial changes to address errors related to the designation and prescription of several clauses and provisions. For example, subpart 552.2 incorrectly identifies the following GSAR clause as ''552.217–73 Notice Regarding Information Collection Requirements'' though the correct identification is ''552.215–73 Notice''.

Second, this case amends several GSAR provision titles and clause titles to bring them in conformance with FAR and GSAR drafting guidelines concerning the use of deviations. GSAR 552.103 is also being amended to update the policy on identification of deviations to provisions and clauses that meet the definition of deviation in FAR 1.401. Under FAR 1.401(a), a deviation is the ''issuance or use of a policy, procedure, solicitation provision . . ., contract clause . . ., method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR''. A GSAR provision or clause that is used in lieu of a FAR provision or clause is a deviation, and therefore, should be indicated as such. For example, GSAR clause 552.227–70 Government Rights (Unlimited) is a deviation to FAR clause 52.227–17 Rights in Data-Special Works; however, the GSAR currently does not identify the clause as being a deviation. As a result, the clause title is being amended to reflect the clause being a deviation.

Third, this case amends the GSAR policy found in 552.101–70 and 552.102 for purposes of reflecting current requirements around the use and incorporation of GSAR provisions and clauses. Lastly, this case makes additional technical amendments throughout the GSAR to conform with the amendments covered by this case. For example, GSAR subpart 519.7 and part 549 are being made non-regulatory due to existing GSAM requirements are non-regulatory.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by the Office of Management and Budget (OMB) not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule has been reviewed and determined by OMB not to be a ''major rule'' under 5 U.S.C. 804(2).

VI. Notice for Public Comment

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because GSA is not issuing a new regulation that has a significant effect or imposes any requirements on contractors or offerors; rather, because this is a noncontroversial action that only impacts the agency's internal acquisition policies and procedures related to correcting GSAR errors and updating GSAR drafting policies and procedures.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section VI. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 503, 511, 512, 513, 514, 515, 517, 519, 522, 523, 527, 528, 529, 532, 536, 537, 538, 539, 541, 542, 543, 546, 549, 552 and 570

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy,General Services Administration.

Therefore, GSA amends 48 CFR parts 503, 511, 512, 513, 514, 515, 517, 519, 522, 523, 527, 528, 529, 532, 536, 537, 538, 539, 541, 542, 543, 546, 549, 552, and 570 as set forth below:

■ 1. The authority citation for 48 CFR parts 503, 511, 512, 513, 514, 515, 517, 519, 522, 523, 527, 528, 529, 532, 536, 537, 538, 539, 541, 542, 543, and 546 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c).

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Revise section 503.1004 to read as follows:

503.1004 Contract clauses.

(a) In accordance with FAR 3.1004(b)(1)(i), GSA has established a lower threshold for the inclusion of FAR clause at 52.203–14. Insert the clause in solicitations and contracts funded with disaster assistance funds expected to be at or above $1,000,000.

(b) The information required by FAR 3.1004(b)(2) is as follows:

(1) *Poster.* GSA Office of Inspector General ''FRAUDNET HOTLINE''.

(2) *Contact information.* The Contractor can obtain the poster from the Contracting Officer.

PART 511—DESCRIBING AGENCY NEEDS

■ 3. Revise section 511.204 to read as follows:

511.204 Contract clauses.

(a) *Specifications and drawings.* Insert the clause at 552.211–72, Reference to Specifications in Drawings, in solicitations and contracts that contain military or other drawings.

(b) *Clauses for supply contracts that exceed the simplified acquisition threshold.* When the contract amount is expected to exceed the simplified acquisition threshold, insert—

(1) The clause at 552.211–73, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(2) The clause at 552.211–75, Preservation, Packaging, and Packing, in solicitations and contracts for supplies. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. Use the clause with its Alternate I in solicitations and contracts for all Federal Supply Schedule contracts.

(3) A clause substantially the same as the clause at 552.211–76, Charges for Packaging, Packing, and Marking, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(4) The clause at 552.211–85, Consistent Pack and Package Requirements, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(5) The clause at 552.211–86, Maximum Weight Per Shipping Container, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(6) The clause at 552.211–87, Export Packing, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(7) The clause at 552.211–88, Vehicle Export Preparation, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(8) The clause at 552.211–89, Non-Manufactured Wood Packaging Material for Export, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities overseas.

(9) The clause at 552.211–90, Small Parts, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(10) The clause at 552.211–91, Vehicle Decals, Stickers, and Data Plates, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(11) The clause at 552.211–92, Radio Frequency Identification (RFID) using Passive Tags, in solicitations and contracts for supplies when deliveries may be made to military activities.

(c) *Supply contracts.* Insert the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micro-purchase threshold. Use the clause with its Alternate I in solicitations and contracts for all Federal Supply Schedule contracts.

■ 4. Revise section 511.404 to read as follows:

511.404 Contract clauses.

(a) *Supplies or services.* (1) *Shelf-life items.* Insert the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified timeframe from the date of manufacture or production:

(i) The clause at 552.211–79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life and when required by the program director, use the clause with its Alternate I.

(ii) The clause at 552.211–80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(2) *Stock replenishment contracts.* Insert the clause at 552.211–81, Time of Shipment, in solicitations and contracts when a stock replenishment contract is contemplated that does not include the clause at 552.211–83 and requires shipment within 45 calendar days after receipt of the order. Use the clause with its Alternate I if shipment is required after 45 days of receipt of the order.

(3) *Indeterminate testing time.* Insert the clause at 552.211–83, Availability for Inspection, Testing, and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. Use the clause with its Alternate I if the contract is for stock items.

(4) *Stock program time of delivery.* Insert the clause at 552.211–94, Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither the FAR clause at 52.211–8, or the FAR clause at 52.211–9 is suitable.

(b) *Construction.* Insert the following clauses in solicitations and contracts when a fixed-price construction contract is contemplated:

(1) The clause at 552.211–10, Commencement, Prosecution, and Completion of Work.

(2) The clause at 552.211–70, Substantial Completion.

■ 5. Add section 511.503 to subpart 511.5 to read as follows:

511.503 Contract clauses.

(a) Insert the clause at 552.211–12, Liquidated Damages-Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see FAR 11.501(a)).

(b) Insert the clause at 552.211–13, Time Extensions, in solicitations and contracts for construction that includes the clause at 552.211–12.

511.504 [Removed]

■ 6. Remove section 511.504.

PART 512—ACQUISITION OF COMMERCIAL ITEMS

■ 7. Revise section 512.301 to read as follows:

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) *Contract clauses.* Insert the following clauses in solicitations and contracts for the acquisition of commercial items:

(1) The clause at 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items. This clause incorporates by reference only those clauses required to implement GSA requirements applicable to the acquisition of commercial items. This clause may be tailored in accordance with FAR 12.302 and GSAM 512.302.

(2) The clause at 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items, when any listed clauses therein apply. This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders that apply to commercial item acquisitions.

(b) *FAR deviation.* GSA has a FAR deviation that allows use of the clause at 552.212–4 in lieu of the FAR clause at 52.212–4. Insert the clause at 552.212–4, Contract Terms and Conditions-Commercial Items, in lieu of the FAR clause at 52.212–4. Use the clause with its Alternate I in lieu of the FAR clause at 52.212–4 and its

Alternate I. This clause may be tailored in accordance with FAR 12.302 and GSAM 512.302.

(c) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR 12.302 and 512.302, the contracting officer may include in solicitations and contracts by addendum other GSAR provisions and clauses.

(d) *Use of additional provisions and clauses.* The Senior Procurement Executive shall approve the use of a provision or clause that is either not:

(1) Prescribed in the FAR or GSAR for use in acquisitions for commercial items.

(2) Consistent with customary commercial practice.

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

■ 8. Revise section 513.202 to read as follows:

513.202 Unenforceability of unauthorized obligations in micro-purchases.

Many supplies or services are acquired subject to commercial supplier agreements, as defined in 502.101. The clause at 552.232–39, Unenforceability of Unauthorized Obligations, automatically applies to any micro-purchase, including those made with the Governmentwide purchase card in lieu of the FAR clause at 52.232–39.

■ 9. Revise section 513.302–5 to read as follows:

513.302–5 Clauses.

Where the supplies or services are offered under a commercial supplier agreement, as defined in 502.101, see 532.706–3 for applicable clauses.

PART 514—SEALED BIDDING

■ 10. Revise section 514.201–6 to read as follows:

514.201–6 Solicitation provisions.

Insert the provision at 552.214–70, ''All or None'' Bids, in invitations for bids when reserving the right to evaluate and make an award on an all or none basis.

■ 11. Amend section 514.202–4 by revising paragraph (a)(3) to read as follows:

514.202–4 Bid samples.

(a) * * *

(3) Insert the provision at 552.214–72, Bid Sample Requirements, in invitations for bids if bid samples are required. This provision may be modified to fit the circumstances of a procurement.

* * * * *

PART 515—CONTRACTING BY NEGOTIATION

■ 12. Revise section 515.209–70 to read as follows:

515.209–70 Contract clause.

(a) Insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts exceeding the simplified acquisition threshold that meet any of the following conditions:

(1) Involve the use or disposition of Government-furnished property.

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan.

(3) Contain a price warranty or price reduction clause.

(4) Involve income to the Government where income is based on operations under the control of the contractor.

(5) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR part 16.

(7) Are subject to adjustment based on a negotiated cost escalation base.

(8) Contain the FAR provision at 52.223–4.

(b) The clause in paragraph (a) of this subsection may be modified to define the specific area of audit (*e.g.,* the use or disposition of Government-furnished property). Legal (*i.e.,* the Office of General Counsel or the Office of Regional Counsel, as appropriate), and Inspector General (*i.e.,* the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing, as appropriate) must concur with any modification to the clause.

(c) Insert the clause at 552.215–73, Notice, in all solicitations and contracts for negotiated procurements exceeding the simplified acquisition threshold in accordance with FAR part 15.

PART 517—SPECIAL CONTRACTING METHODS

■ 13. Revise section 517.109 to read as follows:

517.109 Contract clause.

Use of the FAR clause at 52.217–2 is optional in multi-year contracts authorized by—

(a) 40 U.S.C. 581(c)(6) for the inspection, maintenance, and repair of fixed equipment in a federally-owned building; and

(b) 40 U.S.C. 501(b)(1)(B) for public utility services.

517.203 [Removed]

■ 14. Remove section 517.203.

■ 15. Revise section 517.208 to read as follows:

517.208 Solicitation provisions.

(a) Insert a provision substantially the same as the provision at 552.217–70, Evaluation of Options, in solicitations for the Special Order Program when the following conditions apply:

(1) The solicitation contains an option clause to extend the term of the contract; and

(2) The contract will be fixed price and contain an economic price adjustment clause.

(b) Insert a provision substantially the same as the provision at 552.217–71, Notice Regarding Option(s), in solicitations that include an option clause for increased quantities of supplies or services, or an option clause to extend the term of the contract.

PART 519—SMALL BUSINESS PROGRAMS

■ 16. Add section 519.507 to subpart 519.5 to read as follows:

519.507 Contract clause.

Insert the clause at 552.219–70, Allocation of Orders—Partially Set-Aside Items, in solicitations and contracts when a requirements contract for supplies is contemplated that will involve partially setting aside orders for small business.

519.508 [Removed]

■ 17. Remove section 519.508.

Subpart 519.7 [Removed]

■ 18. Remove subpart 519.7.

■ 19. Add section 519.870–2 to subpart 519.8 to read as follows:

519.870–2 Contract clauses.

(a) Insert the following clauses in solicitations, contracts, and orders issued under GSA's Partnership Agreement:

(1) 552.219–74, Section 8(a) Direct Award;

(2) 52.219–14, Limitations on Subcontracting; and

(3) 52.219–18, Notification of Competition Limited to Eligible 8(a) Participants, with—

(i) Paragraph (c) of the clause substituted with the following text ''(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation'' and

(ii) The text ''(DEVIATION)'' added after the date of the clause.

(b) Do not insert the following FAR clauses—

(1) 52.219–11, Special 8(a) Contract Conditions;

(2) 52.219–12, Special 8(a) Subcontract Conditions; and

(3) 52.219–17, Section 8(a) Award.

519.870–8 [Removed]

■ 20. Remove section 519.870–8.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 21. Revise section 522.103–5 to read as follows:

522.103–5 Contract clauses.

Insert the FAR clause at 52.222–1 in solicitations and contracts for DX rated orders under the Defense Priorities and Allocations System (see FAR subpart 11.6).

PART 523—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

523.303 [Amended]

■ 22. In section 523.303 amend paragraphs (a), (b), and (c) by removing the word ''Insert'' and adding in its place the phrase, ''Insert the clause at''.

523.370 [Amended]

■ 23. Revise section 523.370 to read as follows:

523.370 Solicitation provision.

Insert the provision at 552.223–72, Hazardous Material Information, in solicitations that provide for the delivery of hazardous materials on an f.o.b. origin basis.

PART 527—PATENTS, DATA, AND COPYRIGHTS

■ 24. Revise section 527.409 to read as follows:

527.409 Contract clauses.

GSA has a FAR deviation that allows use of the clauses in paragraphs (a) and (b) of this section in lieu of the FAR clause at 52.227–17.

(a) Except as provided in paragraph (b) of this section, insert the clause at 552.227–70, Government Rights (Unlimited), in lieu of the FAR clause at 52.227–17, in solicitations and contracts for—

(1) Architect-engineer services.

(2) Construction contracts involving architect-engineer services.

(b) If the Government requires sole property rights and exclusive control over the design and data, insert the clause at 552.227–71, Drawings and Other Data to Become Property of Government, in lieu the clause at FAR 52.227–17, in solicitations and contracts for—

(1) Architect-engineer services.

(2) Construction contracts involving architect-engineer services.

PART 528—BONDS AND INSURANCE

■ 25. Revise section 528.310 to read as follows:

528.310 Contract clause for work on a Government installation.

Insert the clause at 552.228–5, Government as Additional Insured, in solicitations and contracts that are expected to exceed the simplified acquisition threshold and require work on a Government installation.

PART 529—TAXES

529.401 through 529.401–71 [Removed]

■ 26. Remove sections 529.401 through 529.401–71.

■ 27. Add section 529.470 to read as follows:

529.470 Domestic contract clauses.

(a) Insert the clause at 552.229–70, Federal, State, and Local Taxes, in solicitations and contracts estimated to exceed the micro-purchase threshold, but not the simplified acquisition threshold.

(b) Insert the clause at 552.229–71, Federal Excise Tax—DC Government, in solicitations and contracts that allow the District of Columbia Government to place orders under the contract.

PART 532—CONTRACT FINANCING

■ 28. Revise section 532.111 to read as follows:

532.111 Contract clauses for non-commercial purchases.

(a) *FAR deviation.* GSA has a FAR deviation that allows use of the clause at 552.232–1 in lieu of the FAR clause at 52.232–1. Insert the clause at 552.232–1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated, in lieu of the FAR clause at 52.232–1.

(b) *Construction contracts.* Insert the clause at 552.232–5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

■ 29. Revise section 532.706–3 to read as follows:

532.706–3 Contract clauses for unenforceability of unauthorized obligations.

GSA has a FAR deviation that allows use of the clause in paragraph (a) of this subsection in lieu of the FAR clause at 52.232–39.

(a) Insert the clause at 552.232–39, Unenforceability of Unauthorized Obligations in all solicitations and contracts in lieu of the FAR clause at 52.232–39.

(b) Insert the clause at 552.232–78, Commercial Supplier Agreements-Unenforceable Clauses, in all solicitations and contracts (including orders) when not using FAR part 12.

■ 30. Amend section 532.904 by revising paragraph (b) to read as follows:

532.904 Determining payment due dates.

* * * * *

(b) An official one level above the contracting officer shall approve justifications exercising the authority prescribed by FAR 32.904(d)(1)(i)(B). The time needed should be determined on a case-by-case basis, but the specified constructive acceptance period shall not exceed 30 days.

■ 31. Revise section 532.908 to read as follows:

532.908 Contract clauses.

(a) *Building services contracts.* Insert the clause at 552.232–72, Final Payment Under Building Services Contracts, in solicitations and contracts for building services.

(b) *Stock, Special Order, and Schedules programs.* (1) GSA has a FAR deviation to authorize payment within 10 days of receipt of a proper invoice. The deviation applies only to:

(i) Orders placed by GSA under Stock, Special Order, and Schedules programs;

(ii) That include FAR clause at 52.232–33; and

(iii) For which the order is placed, and the contractor submits invoices using EDI in accordance with the Trading Partner Agreement.

(2) If the contract is not for commercial items, use the clause at 552.232–25, Prompt Payment, in lieu of the FAR clause at 52.232–25.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

536.515 [Amended]

■ 32. In section 536.515 amend paragraphs (a), (b), and (c) by removing the words ''to be above'' and adding in their place ''to exceed''.

■ 33. Amend section 536.7107 by revising paragraph (a) to read as follows:

536.7107 Contract clauses.

(a) *FAR deviation.* GSA has a FAR deviation that allows use of the clause 552.236–79 in lieu of the FAR clause at 52.216–17. Insert a clause substantially the same as the clause at 552.236–79, Construction-Manager-As-Constructor, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed in lieu of the FAR clause at 52.216–17.

* * * * *

PART 537—SERVICE CONTRACTING

■ 34. Revise section 537.110 to read as follows:

537.110 Contract clauses.

(a) *Contracts for building services.* Except for solicitations and contracts for building services placed under FAR subpart 8.7, insert the clause at 552.237–71, Qualifications of Employees, in solicitations and contracts for building services that are anticipated to exceed the simplified acquisition threshold.

(b) *Contracts for guard services.* Insert the clause at 552.237–72, Prohibition Regarding ''Quasi-Military Armed Forces,'' in solicitations and contracts for guard services.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

538.273 [Amended]

■ 35. In section 538.273 amend paragraph (d)(1) by removing the terms ''Authorized FSS'' and adding in its place the term ''Authorized Federal Supply Schedule''.

■ 36. Amend section 538.7204 by revising paragraph (b) to read as follows:

538.7204 Contract clauses.

* * * * *

(b) Insert the clause at 552.238–115, Special Ordering Procedures for the Acquisition of Order-Level Materials, in FSS solicitations and contracts authorized to allow for order-level materials.

PART 539—ACQUISITION OF INFORMATION TECHNOLOGY

■ 37. Revise section 539.7002 to read as follows:

539.7002 Solicitation provision and contract clause.

Except for solicitations and contracts for personal services with individuals—

(a) Insert the provision at 552.239–70, Information Technology Security Plan and Security Authorization, in solicitations that include information technology supplies, services or systems in which the contractor will have physical or electronic access to government information that directly supports the mission of GSA.

(b) Insert the clause at 552.239–71, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts containing the provision in paragraph (a) of this section.

PART 541—ACQUISITION OF UTILITY SERVICES

■ 38. Revise section 541.501 to read as follows:

541.501 Contract clauses.

(a) *FAR deviation.* GSA has a FAR deviation that allows use of the clause at 552.241–70 in lieu of the FAR clause at 52.232–19. Insert the clause at 552.241–70, Availability of Funds for the Next Fiscal Year or Quarter, in lieu of the FAR clause at 52.232–19, in all utility acquisitions.

(b) *Utility services.* Insert the clause at 552.241–71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 39. Revise section 542.1107 to read as follows:

542.1107 Contract clause.

Insert the clause at 552.242–70, Status Report of Orders and Shipments, in solicitations and contracts when a requirements or indefinite-quantity contract for Stock or Special Order Program items is contemplated. The clause may be used in indefinite-delivery definite-quantity contracts for Stock or Special Order Program items when close monitoring is necessary because numerous shipments are involved.

PART 543—CONTRACT MODIFICATIONS

■ 40. Revise section 543.205 to read as follows:

543.205 Contract clause.

Insert the clause at 552.243–71, Equitable Adjustments, in solicitations and contracts that include any of the following FAR clauses: 52.243–4, 52.243–5, or 52.236–2.

PART 546—QUALITY ASSURANCE

■ 41. Revise sections 546.302–70 through 546.312 to read as follows:

546.302–70 Source inspection by Quality Approved Manufacturer for fixed-price supply contracts.

(a) Insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer:

(1) In FAS solicitations and contracts that—

(i) Will exceed the simplified acquisition threshold;

(ii) Include the FAR clause at 52.246–2; and

(iii) Provide for source inspection for the Stock and Special Order Programs.

(2) In solicitations and contracts that—

(i) Are below the simplified acquisition threshold;

(ii) Include the FAR clause at 52.246–2; and

(iii) Support the Wildfire program; or

(iv) When a pattern of acquisitions demonstrates an ongoing relationship with the contractor.

(b) The contracting officer may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the U.S. Virgin Islands according to paragraph (a)(1) of the clause at 552.246–70 when any of the following conditions apply and after coordinating the authorization with QVOC and documenting the authorization in the file:

(1) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(2) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(3) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

546.302–71 Source inspection.

Insert the clause at 552.246–71, Source Inspection by Government, in FAS solicitations and contracts where Government personnel at the source will perform inspection.

546.302–72 Destination Inspection.

Insert the clause at 552.246–78, Inspection at Destination, in solicitations and contracts for supplies that require inspection at destination.

546.312 Construction contracts.

Insert the clause at 552.246–72, Final Inspection and Tests, in solicitations and contracts for construction that include the FAR clause at 52.246–12.

■ 42. Revise section 546.710 to read as follows:

546.710 Contract clause.

Insert the clause at 552.246–77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, in solicitations and contracts that include the FAR clause at 52.246–17.

PART 549—[REMOVED]

■ 43. Under the authority of 40 U.S.C. 121(c), remove part 549.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 44. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 45. Revise sections 552.101–70 through 552.103 to read as follows:

552.101–70 Using part 552.

(a) *Numbering.* (1) GSAR provisions or clauses which are ''substantially'' the same as a FAR provision or clause (*e.g.,* 552.232–1, Payments) are identified as follows:

(i) The provision or clause has the same title as the FAR provision or clause.

(ii) The provision or clause has the same number as the FAR provision or clause, except the number is preceded by the number ''5''.

(2) GSA prescribed provisions and clauses (*e.g.,* 552.232–72, Final Payment Under Building Services Contracts) are numbered in the same manner as the FAR, except that—

(i) The number is preceded by the number ''5'', and

(ii) The sequential number at the end of the number of the provision or clause is ''70'' or a higher number.

(b) *Prescriptions.* Each provision or clause in subpart 552.2 is prescribed at the place in the GSAR where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other GSAM locations.

(c) *Introductory text.* Within subpart 552.2, the introductory text of each provision or clause includes a cross-reference to the location in the GSAR that prescribes its use.

(d) *Dates.* Since they are subject to revision from time to time, all GSAR provisions, clauses, and alternates are dated; *e.g.,* (DEC 1983). To avoid questions concerning which version of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full text.

552.102 Incorporating provisions and clauses.

(a) Except for paragraph (b) of this section, GSAR provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text. Upon request, the contracting officer shall provide the full text of any GSAR provision or clause incorporated by reference.

(b) A GSAR provision or clause should not be incorporated in full text if—

(1) It requires modification or completion by the Government (*e.g.,* completion of blanks in provisions or clauses) (see FAR 52.104 and 552.104);

(2) It requires completion by the offeror or contractor;

(3) It is identified as a deviation (see 552.103); or

(4) It is used with one or more alternates.

552.103 Identification of provisions and clauses.

(a) *General.* When a GSAR provision or clause is used without deviation in a solicitation or contract, it shall be identified by number, title, and date (*e.g.,* 552.211–77, Packing List (FEB 1996)).

(b) *Deviations.* (1) *Federal Acquisition Regulation deviations.* When a GSAR provision or clause is used with an authorized deviation in lieu of a FAR provision or clause in a solicitation or contract, it shall be identified by number, title, date, and the deviation label (*e.g.,* 552.232–1, Payments (NOV 2009) (DEVIATION FAR 52.232–1)). The deviation label consists of the text ''DEVIATION FAR'' and the applicable FAR provision or clause number enclosed in parentheses (*e.g.,* (DEVIATION FAR 52.232–1)).

(2) *General Services Administration Acquisition Regulation deviations.* When a GSAR provision or clause is used with an authorized deviation in a solicitation or contract, it shall be identified by number, title, date, and the text ''(DEVIATION)'' inserted after the date (*e.g.,* 552.232–1, Payments (NOV 2009) (DEVIATION)).

(c) *Alternates.* When a GSAR provision or clause is used with an alternate in a solicitation or contract, it shall be identified by the basic provision or clause citation and the alternate label (*e.g.,* 552.211–77, Packing List (FEB 1996) Alternate I (MAY 2003)). The alternate label consists of the word ''Alternate'', the alternate number, and date (*e.g.,* Alternate I (MAY 2003)).

■ 46. Revise section 552.107–70 to read as follows:

552.107–70 Solicitation provision and contract clause.

GSA has a FAR deviation that allows use of the following provision and clause in lieu of the FAR provision at 52.252–5 and the FAR clause at 52.252–6:

(a) Insert the provision at 552.252–5, Authorized Deviations in Provisions, in solicitations that include any FAR or GSAR provision with an authorized deviation in lieu of the FAR provision at 52.252–5.

(b) Insert the clause at 552.252–6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation in lieu of the FAR clause at 52.252–6.

552.211–10 [Amended]

■ 47. Amend section 552.211–10 by removing from the introductory text ''511.404'' and adding ''511.404(b)'' in its place.

552.211–12 [Amended]

■ 48. Amend section 552.211–12 by—

■ a. Removing from the introductory text ''511.404'' and adding ''511.503(a)'' in its place; and

■ b. Revising the clause heading.

The revision reads as follows:

552.211–12 Liquidated Damages—Construction.

* * * * *

Liquidated Damages—Construction (MAR 2019)

* * * * *

552.211–13 [Amended]

■ 49. Amend section 552.211–13 by removing from the introductory text ''511.504'' and adding ''511.503(b)'' in its place.

552.211–70 [Amended]

■ 50. Amend section 552.211–70 by removing from the introductory text ''511.404'' and adding ''511.404(b)'' in its place.

■ 51. Amend section 552.211–75 by revising the section heading, and the introductory text of Alternate I to read as follows:

552.211–75 Preservation, Packaging, and Packing.

* * * * *

Alternate I (MAY 2003). As prescribed at 511.204(b)(2), substitute the following sentence for the last sentence of the basic clause:

* * * * *

■ 52. Revise section 552.211–76 heading to read as follows:

552.211–76 Charges for Packaging, Packing, and Marking.

* * * * *

■ 53. Amend section 552.211–77 by revising the introductory text of Alternate I to read as follows:

552.211–77 Packing List.

* * * * *

Alternate I (MAY 2003). As prescribed in 511.204(c), substitute the following paragraphs (a)(3) and (b) for paragraphs (a)(3) and (b) of the basic clause:

* * * * *

■ 54. Amend section 552.211–79 by revising the introductory text of Alternate I to read as follows:

552.211–79 Acceptable Age of Supplies.

* * * * *

Alternate I (FEB 1996). As prescribed in 511.404(a)(1)(i), substitute the following sentence for the first sentence of the basic clause:

* * * * *

552.211–80 [Amended]

■ 55. Amend section 552.211–80 by removing from the introductory text ''511.404(a)(2)'' and adding ''511.404(a)(1)'' in its place.

■ 56. Amend section 552.211–81 by—

■ a. Removing from the introductory text ''511.404(b)'' and adding ''511.404(a)(2)'' in its place; and

■ b. Revising the introductory text of Alternate I.

The revision reads as follows:

552.211–81 Time of Shipment.

* * * * *

Alternate I (FEB 1996). As prescribed in 511.404(a)(2), add the following paragraph to the basic clause:

* * * * *

■ 57. Amend section 552.211–83 by—

■ a. Removing from the introductory text ''511.204(c)'' and adding ''511.404(a)(3)'' in its place; and

■ b. Revising the introductory text of Alternate I.

The revision reads as follows:

552.211–83 Availability for Inspection, Testing, and Shipment/Delivery.

* * * * *

Alternate I (FEB 1996). As prescribed in 511.404(a)(3), add the following paragraph (b) to the basic clause and redesignate paragraph (b) of the basic clause accordingly.

* * * * *

■ 58. Revise section 552.211–85 heading to read as follows:

552.211–85 Consistent Pack and Package Requirements.

* * * * *

■ 59. Revise section 552.211–86 heading to read as follows:

552.211–86 Maximum Weight per Shipping Container.

* * * * *

■ 60. Revise section 552.211–87 heading to read as follows:

552.211–87 Export Packing.

* * * * *

■ 61. Revise section 552.211–88 heading to read as follows:

552.211–88 Vehicle Export Preparation.

* * * * *

■ 62. Revise section 552.211–89 heading to read as follows:

552.211–89 Non-manufactured Wood Packaging Material for Export.

* * * * *

■ 63. Revise section 552.211–90 heading to read as follows:

552.211–90 Small Parts.

* * * * *

■ 64. Revise section 552.211–91 heading to read as follows:

552.211–91 Vehicle Decals, Stickers, and Data Plates.

* * * * *

■ 65. Revise section 552.211–92 heading to read as follows:

552.211–92 Radio Frequency Identification (RFID) Using Passive Tags.

* * * * *

■ 66. Amend section 552.211–94 by—

■ a. Revising the section heading; and

■ b. Removing from the introductory text ''511.404(d)'' and adding ''511.404(a)(4)'' in its place.

The revision reads as follows:

552.211–94 Time of Delivery.

* * * * *

552.212–71 [Amended]

■ 67. Amend section 552.212–71 by removing from the introductory text ''512.301(a)(2)'' and adding ''512.301(a)(1)'' in its place.

552.212–72 [Amended]

■ 68. Amend section 552.212–72 by removing from the introductory text ''512.301(a)(3)'' and adding ''512.301(a)(2)'' in its place.

552.216–73 [Amended]

■ 69. Amend section 552.216–73, in Alternate I by removing from the end of the paragraph ''basic provision'' and adding ''basic provision and redesignate paragraph (e) accordingly'' in its place.

552.216–75 [Amended]

■ 70. Amend section 552.216–75 by—

■ a. Removing from the introductory text the word ''provision'' and adding the word ''clause'' in its place; and

■ b. Removing from the end of the section ''(End of Provision)'' and adding ''(End of clause)'' in its place.

■ 71. Amend section 552.217–73 by—

■ a. Redesignating section 552.217–73 as 552.215–73;

■ b. Revising the heading of the newly redesignated section 552.215–73; and

■ c. Removing from the introductory text ''515.209–70(b)'' and adding ''515.209–70(c)'' in its place.

The revision reads as follows:

552.215–73 Notice.

* * * * *

552.219–70 [Amended]

■ 72. Amend section 552.219–70 by removing from the introductory text ''519.508'' and adding ''519.507'' in its place.

552.219–74 [Amended]

■ 73. Amend section 552.219–74 by removing from the introductory text ''519.870–8'' and adding ''519.870–2(a)'' in its place.

■ 74. Amend section 552.227–70 by—

■ a. Removing from the introductory text ''527.409'' and adding ''527.409(a)'' in its place; and

■ b. Revising the clause heading.

The revision reads as follows:

552.227–70 Government Rights (Unlimited).

* * * * *

Government Rights (Unlimited) (MAY 1989) (Deviation FAR 52.227–17)

* * * * *

■ 75. Amend section 552.227–71 by revising the introductory text and clause heading to read as follows:

552.227–71 Drawings and Other Data To Become Property of Government.

As prescribed in 527.409–70(b), insert the following clause:

Drawings and Other Data To Become Property of Government (MAY 1989) (Deviation FAR 52.227–17)

* * * * *

552.229–70 [Amended]

■ 76. Amend section 552.229–70 by removing from the introductory text

''529.401–70'' and adding ''529.470(a)'' in its place.

552.229–71 [Amended]

■ 77. Amend section 552.229–71 by removing from the introductory text ''529.401–71'' and adding ''529.470(b)'' in its place.

552.232–1 [Amended]

■ 78. Amend section 552.232–1 by removing from the introductory text ''532.908(a)'' and adding ''552.111(a)'' in its place.

552.232–5 [Amended]

■ 79. Amend section 552.232–5 by removing from the introductory text ''532.111'' and adding ''552.111(b)'' in its place.

552.232–25 [Amended]

■ 80. Amend section 552.232–25 by removing from the introductory text ''532.908(c)(2)'' and adding ''532.908(b)(2)'' in its place.

■ 81. Amend section 552.232–39 by revising the section heading, the introductory text, and the clause heading to read as follows:

552.232–39 Unenforceability of Unauthorized Obligations.

As prescribed in 532.706–3, insert the following clause:

Unenforceability of Unauthorized Obligations (FEB 2018) (Deviation FAR 52.232–39)

* * * * *

552.232–72 [Amended]

■ 82. Amend section 552.232–72 by removing from the introductory text ''532.904(b)'' and adding ''532.908(a)'' in its place.

■ 83. Amend section 552.232–78 by—

■ a. Revising the introductory text; and

■ b. Removing from the clause heading ''(FEB. 2018)'' and adding ''(FEB 2018)'' in its place.

The revision reads as follows:

552.232–78 Commercial Supplier Agreements—Unenforceable Clauses.

As prescribed in 532.706–3(b), insert the following clause:

* * * * *

■ 84. Amend section 552.236–71 in Alternate I by revising the introductory text to read as follows:

552.236–71 Contractor Responsibilities.

* * * * *

Alternate I (MAR 2019). As prescribed in 536.571, substitute the following paragraphs (d), (e), (f), and (g) for paragraphs (d), (e), (f), and (g) of the basic clause:

* * * * *

552.236–74 [Amended]

■ 85. Amend section 552.236–74 by removing from the introductory text ''insert the'' and adding ''insert a provision substantially the same as the'' in its place.

552.236–75 [Amended]

■ 86. Amend section 552.236–75 by removing from the introductory text ''insert the'' and adding ''insert a provision substantially the same as the'' in its place.

■ 87. Amend section 552.236–76 by revising the section heading, the introductory text, and the introductory text of Alternate I to read as follows:

552.236–76 Basis of Award—Sealed Bidding Construction.

As prescribed in 536.270–5(c), insert a provision substantially the same as the following provision:

* * * * *

Alternate I (MAR 2019). As prescribed in 536.270–5(c), redesignate the basic provision as paragraph (a) and add the following paragraph (b) to the basic provision:

* * * * *

552.236–77 [Amended]

■ 88. Amend section 552.236–77 by removing from the introductory text ''insert the'' and adding ''insert a clause substantially the same as the'' in its place.

■ 89. Amend section 552.236–79 by revising the introductory text and clause heading to read as follows:

552.236–79 Construction-Manager-As-Constructor.

As prescribed in 536.7107(a), insert a clause substantially the same as the following clause:

Construction-Manager-As-Constructor (JAN 2020) (Deviation FAR 52.216–17)

* * * * *

552.236–80 [Amended]

■ 90. Amend section 552.236–80 by removing from the introductory text ''insert the'' and adding ''insert a clause substantially the same as the'' in its place.

552.238–77 [Amended]

■ 91. Amend section 552.238–77 by—

■ a. Removing from the clause heading ''(FEB 2020)'' and adding ''(MAR 2020)'' in its place; and

■ b. Removing from the end of the section ''End of Clause'' and adding ''(End of clause)'' in its place.

552.238–81 [Amended]

■ 92. In section 552.238–81 amend Alternate I by removing from the introductory text ''substitute the following paragraph'' and adding ''substitute the following paragraphs'' in its place.

552.238–82 [Amended]

■ 93. Amend section 552.238–82 by—

■ a. Removing from the clause heading ''(MAY 2019)'' and adding ''(MAR 2020)'' in its place;

■ b. Removing paragraph (e), and

■ c. In Alternate I removing ''(MAY 2019)'' and adding ''(MAR 2020)'' in its place.

■ 94. Amend section 552.241–70 by revising the introductory text and the clause heading to read as follows:

552.241–70 Availability of Funds for the Next Fiscal Year or Quarter.

As prescribed in 541.501(a), insert the following:

Availability of Funds for the Next Fiscal Year or Quarter (AUG 2010) (Deviation FAR 52.232–19)

* * * * *

■ 95. Amend section 552.241–71 by revising the introductory text to read as follows:

552.241–71 Disputes (Utility Contracts).

As prescribed in 541.570(b), insert the following clause:

* * * * *

552.242–70 [Amended]

■ 96. Amend section 552.242–70 by removing from the clause heading ''(FEB 9, 2009)'' and adding ''(FEB 2009)'' in its place.

552.246–70 [Amended]

■ 97. Amend section 552.246–70 by removing from the clause heading ''(JUL 09)'' and adding ''(JUL 2009)'' in its place.

552.246–71 [Amended]

■ 98. Amend section 552.246–71 by removing from the clause heading ''(JUNE 1, 2009)'' and adding ''(JUN 2009)'' in its place.

■ 99. Amend section 552.246–77 by—

■ a. Revising the introductory text; and

■ b. Removing from the clause heading ''(JUL 09)'' and adding ''(JUL 2009)'' in its place.

The revision reads as follows:

552.246–77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.

As prescribed in 546.710, insert the following clause:

* * * * *

552.246–78 [Amended]

■ 100. Amend section 552.246–78 by removing from the clause heading ''(JUL 09)'' and adding ''(JUL 2009)'' in its place.

■ 101. Revise section 552.252–5 to read as follows:

552.252–5 Authorized Deviations in Provisions.

As prescribed in 552.107–70(a), insert the following provision:

Authorized Deviations in Provisions (DATE) (Deviation FAR 52.252–5)

(a) *Deviations to FAR provisions.* This solicitation identifies any authorized deviation to a Federal Acquisition Regulation (FAR) (48 CFR chapter 1) provision by—

(1) The addition of ''(DEVIATION)'' after the date of the FAR provision when an authorized deviation to a FAR provision is being used, and

(2) The addition of ''(DEVIATION FAR (provision number))'' after the date of the GSAR provision when a GSAR provision is being used in lieu of a FAR provision.

(b) *Deviations to GSAR provisions.* This solicitation identifies any authorized deviation to a General Services Administration Acquisition Regulation (GSAR) (48 CFR chapter 5) provision by the addition of ''(DEVIATION)'' after the date of the provision.

(c) ''*Substantially the same as*'' *provisions.* Changes in wording of provisions prescribed for use on a ''substantially the same as'' basis are not considered deviations.

(End of provision)

■ 102. Revise section 552.252–6 to read as follows:

552.252–6 Authorized Deviations in Clauses.

As prescribed in 552.107–70(b), insert the following clause:

Authorized Deviations in Clauses (DATE) (Deviation FAR 52.252–6)

(a) *Deviations to FAR clauses.* This solicitation or contract identifies any authorized deviation to a Federal Acquisition Regulation (FAR) (48 CFR chapter 1) clause by—

(1) The addition of ''(DEVIATION)'' after the date of the FAR clause when an authorized deviation to a FAR clause is being used, and

(2) The addition of ''(DEVIATION FAR (clause number))'' after the date of the GSAR clause when a GSAR clause is being used in lieu of a FAR clause.

(b) *Deviations to GSAR clauses.* This solicitation or contract identifies any authorized deviation to a General Services Administration Acquisition Regulation (GSAR) (48 CFR chapter 5) clause by the addition of ''(DEVIATION)'' after the date of the clause.

(c) ''*Substantially the same as*'' *clauses.* Changes in wording of clauses prescribed for use on a ''substantially the same as'' basis are not considered deviations.

(End of clause)

552.270–1 [Amended]

■ 103. Amend section 552.270–1 by—

■ a. In Alternate I removing from the introductory text ''paragraph for paragraph (c)(2)(i)'' and adding ''paragraph (c)(2)(i) for paragraph (c)(2)(i)'' in its place; and

■ b. In Alternate II removing from the introductory text ''paragraph for paragraph (e)(4)'' and adding ''paragraph (e)(4) for paragraph (e)(4)'' in its place.

552.270–31 [Amended]

■ 104. Amend section 552.270–31 by revising Alternate I to read as follows:

552.270–31 Prompt Payment.

* * * * *

Alternate I (SEP 1999). As prescribed in 570.703, delete paragraphs (a)(2) and (b) of the basic clause, and redesignate the remaining paragraphs accordingly.

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

■ 105. The authority citation for 48 CFR part 570 continues to read as follows:

Authority: 40 U.S.C. 121(c).

570.701 [Amended]

■ 106. Amend section 570.701 by removing from the introductory text ''Include provisions'' and adding ''Insert provisions'' in its place.

■ 107. Amend section 570.702 by revising the introductory text and the entry for 552.270–1 to read as follows:

570.702 GSAR solicitation provisions.

Each SFO must include provisions substantially the same as the following, unless the contracting officer determines that the provision is not appropriate. The contracting officer shall document the file with the basis for omitting or substantially changing a provision.

552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property. Use the provision with its Alternate I if it is advantageous to the Government to allow offers to be submitted up to the exact time specified for award. Use the provision with its Alternate II if the Government intends to award without discussions.

* * * * *

■ 108. Amend section 570.703 by—

■ a. Revising paragraph (a) introductory text, and the entry for 552.270–4 in paragraph (a); and

■ b. Revising paragraph (b).

The revisions read as follows:

570.703 GSAR contract clauses.

(a) Insert clauses substantially the same as the following in solicitations and contracts for leasehold interests in real property that exceed the simplified lease acquisition threshold, unless the contracting officer determines that a clause is not appropriate. The contracting officer shall document the file with the basis for omitting or substantially changing a clause. A deviation is not required under section 570.704 to determine that a clause in this section is not appropriate. The following clauses may be inserted in solicitations and contracts for leasehold interests in real property at or below the simplified lease acquisition threshold.

* * * * *

552.270–4 Definitions. Insert this clause if including the clause at 552.270–28.

* * * * *

(b) Insert the following clauses in solicitations and contracts for leasehold interests in real property:

552.270–30 Price Adjustment for Illegal or Improper Activity.

552.270–31 Prompt Payment.

552.270–32 Covenant Against Contingent Fees.

[FR Doc. 2021–20541 Filed 10–5–21; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210930–0203]

RIN 0648–BK80

Fisheries Off West Coast States; Effective Dates of West Coast Groundfish Electronic Monitoring Program

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule revises regulations to delay implementation of the Electronic Monitoring (EM) Program for the West Coast Groundfish Trawl Rationalization Program. This action will delay implementation of the EM

program until at least January 1, 2024. This change will provide additional time for industry and prospective service providers to prepare for implementation. The change is expected to strengthen Pacific Fishery Management Council and industry support for the EM program and may increase participation when the EM program is implemented.

DATES: Effective October 6, 2021 Comments must be received by November 5, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0089 by any 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–2021–0089 in the Search box, click the ''Comment'' icon, complete the required fields, and 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).

Electronic Access

This interim final rule is accessible at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/region/west-coast* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206–526–4656, or email: *colin.sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2019 (84 FR 31146), at the recommendation of the Pacific Coast Fishery Management Council (Council), NMFS published a final rule that authorized the use of EM in place of human observers to meet requirements for 100-percent at-sea monitoring for catcher vessels in the groundfish trawl catch share fishery (Trawl Rationalization Program). EM video systems are used to record catch and discards by the vessel crew while at sea. Vessel operators are responsible for recording catch and discards in a logbook, which is then used to debit individual fishing quota (IFQ) accounts and cooperative allocations. After an EM vessel completes a fishing trip, the vessel operator submits the video data to their third-party EM service provider for analysis to be used to audit the vessel operator's self-reported discard logbooks. The June 2019 final rule established requirements for vessel owners and operators and EM service providers participating in the EM program, and for first receivers receiving catch from EM trips. The June 2019 rule had an implementation date of January 1, 2021.

At its June 2020 meeting, the Council recommended a delay in program implementation until January 1, 2022. The Council wanted to provide more time for industry and the Pacific States Marine Fisheries Commission (PSMFC) to develop a model for industry to fund PSMFC for review of video from their fishing trips. NMFS published a subsequent proposed rule (85 FR 53313; August 28, 2020) and final rule (85 FR 74614; November 23, 2020) that delayed implementation of the EM program until January 1, 2022 to provide additional time for industry and prospective service providers to prepare for implementation. PSMFC has been reviewing video data from the experimental EM Exempted Fishing Permit (EFP) program, funded by NMFS, since 2015. The Council recommended this delay, and NMFS implemented it, in order to increase industry buy-in and for success of the EM program at reducing monitoring costs for the fishery.

At the June 2021 meeting, the Council discussed delaying implementation of all EM program regulations until at least January 1, 2023. The Council and the industry have expressed interest in developing a mechanism for the industry to fund video review and storage by PSMFC, and reducing concerns regarding confidentiality and Federal record retention. The Council subsequently transmitted a letter to NMFS recommending a delay in implementation of the EM program regulations and extending the EM EFPs. At its September 2021 meeting, the Council made a final recommendation that the EM program be delayed until January 2024 at the earliest. NMFS is implementing this recommendation through this interim final rule.

NMFS has already received applications from prospective companies interested in obtaining an EM service provider permit for 2022. NMFS intends to consider any permit applications already received when the permanent program begins. Any applications for EM service provider permits or EM Authorizations received by NMFS prior to October 6, 2021 will be considered for future approval when the EM program becomes effective. When reviewing these applications, NMFS will issue a determination on whether it is necessary for applicants to submit updated or additional application materials.

Summary of Regulations

This action amends § 660.603(b), which describes EM provider permits and responsibilities, and § 660.604(e), which describes vessel and first receiver responsibilities. This interim final rule removes the specific dates by which NMFS will begin accepting EM service provider and EM Authorization permit applications for the 2022 fishing year. These dates were, respectively, May 1, 2021, and September 1, 2021. This rule will instead create a notification provision through which NMFS will provide public notice at least 90 days prior to the date on which it would begin accepting initial applications. As noted above, NMFS has already received several EM service provider permit applications and will consider and review these applications, in addition to any new applications, when the program is fully implemented. Upon review NMFS will make a determination regarding the status of each application and may request updated or additional information as necessary.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this interim final rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that, pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable, unnecessary, or contrary to the public interest. Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the

rulemaking. This action has critical timing needs. The regulatory changes under this action must be in place prior to January 1, 2022, which is the current effective date of EM program regulatory requirements. If these changes are not in place before that date, NMFS would need to expend limited agency resources to temporarily implement the program (*i.e.,* process, review and issue permits) until the rulemaking is completed. Additionally, the regulatory changes under this action must be published in advance of the January 1, 2022 effective date to ensure sufficient time to notify EM service providers and vessels potentially seeking to submit applications for EM authorizations for the 2022 fishing year about changes to the program. This advance notice will allow the EM service providers and vessels to better plan for the 2022 fishing year and avoid them committing time and resources to a program that will be delayed for at least two years. This action would change the effective date until such time as determined appropriate by NMFS and the Council to fully implement the EM program, no earlier than January 1, 2024. For these reasons, NMFS finds good cause exists to issue this interim final rule without advance notice in a proposed rule or an opportunity for public comment on this action. For the same reasons, NMFS also finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness, so that this interim final rule may become effective upon publication in the **Federal Register**.

Although NMFS is waiving prior notice and opportunity for public comment, we are requesting comments on this interim final rule until November 5, 2021. NMFS encourages the public to participate in this rulemaking by submitting comments containing relevant information, data, or views. This interim final rule may be amended based on comments received. Please see **ADDRESSES** for more information on the ways to submit comments.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this 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.

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648–0785, West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: September 30, 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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C 7001 *et seq.*

■ 2. In § 660.603, revise paragraph (b) introductory text to read as follows:

§ 660.603 Electronic monitoring provider permits and responsibilities.

* * * * *

(b) *Provider permits.* To be an EM service provider, a person must obtain an EM service provider permit and endorsement by submitting an application to the NMFS West Coast Region Fisheries Permit Office. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM service provider permits for the first year of the Program. A person may meet some requirements of this section through a partnership or subcontract with another entity, in which case the application for an EM service provider permit must include information about the partnership. Once NMFS begins accepting applications, if a new EM service provider, or an existing EM service provider seeking to deploy a new EMS or software version, submits an application by June 1, NMFS will issue a new permit by January 1 of the following calendar year. Applications submitted after June 1 will be processed as soon as practicable. NMFS will only process complete applications. Additional endorsements to provide observer or catch monitor services may be obtained under § 660.18.

* * * * *

■ 3. In § 660.604 revise paragraph (e) introductory text to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their EM Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year.

* * * * *

[FR Doc. 2021–21754 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 191
Wednesday, October 6, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2021–0020]

RIN 1601–AB04

Privacy Act of 1974

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS or Department) is proposing to amend its regulations under the Privacy Act of 1974. DHS is proposing to update and streamline the language of several provisions. DHS invites comment on all aspects of this proposal.

DATES: Comments must be received on or before December 6, 2021.

ADDRESSES: You may submit comments, identified by docket number DHS–2021–0020, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lynn Parker Dupree, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Homeland Security has authority under 5 U.S.C. 301, 552, and 552a, and 6 U.S.C. 112(e) to issue Privacy Act regulations. That authority has been delegated to the Chief Privacy Officer of the Department. *See* DHS Del. No. 13001, Rev. 01 (June 2, 2020).

On January 27, 2003, DHS published an interim rule in the **Federal Register** (68 FR 4056) that established DHS procedures for obtaining agency records under the Privacy Act, 5 U.S.C. 552a. DHS has since issued minor procedural amendments to the interim rule, *see* 85 FR 11829 (Feb. 28, 2020), but DHS has not issued a more comprehensive update since 2003.

On November 22, 2016, DHS issued a final rule amending the Department's regulations under the Freedom of Information Act (FOIA), 6 CFR part 5, subpart A, in order to update and streamline the language of several procedural provisions, to incorporate changes brought by the amendments to the FOIA under the Open Government Act of 2007 and FOIA Improvement Act of 2016, and to reflect developments in the case law. *See* 81 FR 83625.

DHS now proposes to revise its Privacy Act regulations at 6 CFR part 5, subpart B, to conform with subpart A, to clarify and streamline the language of several provisions, to incorporate the additional rights granted under the Privacy Act by way of the Judicial Redress Act of 2015 (JRA), and to reflect developments in the case law. Further, DHS proposes to revise Appendix A to Part 5—*FOIA/Privacy Act Offices of the Department of Homeland Security*—to reflect updates to the proper offices in receiving FOIA and Privacy Act requests. This appendix would also replace Appendix I to Subpart A. As such, DHS proposes to revise its FOIA regulations at 6 CFR part 5, subpart A, for the limited purpose of replacing references to Appendix I to subpart A with references to Appendix A to part 5.

DHS describes the primary proposed changes in the section-by-section analysis below. DHS invites public comment on each of the proposed changes described, as well as any other matters within the scope of the rulemaking.

II. Section by Section Analysis

The proposed rules continue to inform the public of the responsibilities of DHS in conjunction with requests received under the Privacy Act as well as the requirements for filing a proper Privacy Act or Judicial Redress Act request.

Section 5.20 General Provisions

DHS is proposing to amend this section to be consistent with Subpart A and incorporate changes made to 5 U.S.C. 552a by way of the Judicial Redress Act of 2015 (JRA), Public Law 114–126 (Feb. 24, 2016).[1] Proposed section 5.20(a)(2) references the JRA, the term ''covered persons,'' and any **Federal Register** notice making a JRA designation. Proposed section 5.20(a)(3) would remove the following language in existing section 5.20(a)(2): ''Except to the extent a Department component has adopted separate guidance under the Privacy Act, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart pursuant to approval by the Department.'' This proposal would remove a reference to separate guidance developed by Components. Components may continue to issue their own guidance under this subpart pursuant to approval by the Department; however, specific authorization for component guidance is not necessary to be included in the regulatory text.

DHS is proposing to amend the definition of ''Component,'' to be consistent with the definition at 6 CFR 5.1(b). This definitional change will not result in a change in practice.

DHS is also proposing to add a definition of ''individual,'' in paragraph (b)(6). This definition includes a U.S. citizen, a lawful permanent resident, and a ''covered person'' as defined

[1] The Judicial Redress Act of 2015, 5 U.S.C. 552a note, extends certain rights of judicial redress established under the Privacy Act of 1974, 5 U.S.C. 552a, to citizens of certain foreign countries or regional economic organizations. Specifically, the Judicial Redress Act enables a ''covered person'' to bring suit in the same manner, to the same extent, and subject to the same limitations, including exemptions and exceptions, as an ''individual'' (*i.e.,* a U.S. citizen or lawful permanent resident) may bring and obtain with respect to the: (1) Intentional or willful unlawful disclosure of a covered record under 5 U.S.C. 552a(g)(1)(D); and (2) improper refusal to grant access to or amendment of a covered record under 5 U.S.C. 552a(g)(1)(A) & (B).

under the JRA. The JRA extends the access and amendment provisions of the Privacy Act to covered persons for access and amendment requests of covered records, as defined by the JRA. As such, the term ''individual'' includes the term ''covered persons,'' but only to the extent that this subpart applies to access and amendment requests for covered records, as defined below.

DHS is also proposing to add a definition of the term ''records'' to make clear DHS relies on the definition of ''record'' in the Privacy Act. *See* 5 U.S.C. 552a(a)(4). But in cases that fall under the JRA, the JRA's definition of ''covered record'' would apply. Under the JRA, the term ''covered record'' has the same meaning for a covered person as a record has for an individual under the Privacy Act, once the covered record is transferred (1) by a public authority of, or private entity within, a country or regional economic organization, or member country of such organization, which at the time the record is transferred is a covered country; and (2) to a designated Federal agency or component for purposes of preventing, investigating, detecting, or prosecuting criminal offenses. These changes are consistent with current DHS practice.

DHS also proposes to amend section 5.20(d) by replacing the term ''exemption'' with the term ''exception,'' to be consistent with terminology within the Privacy Act.

Section 5.21 Requests for Access to Records

DHS is proposing multiple changes to this section to be consistent with the similar provision in Subpart A regarding requirements for making FOIA requests. *See* 6 CFR 5.3. These conforming changes would be explanatory in nature and would not result in a departure from current practice.

Further, DHS proposes to amend paragraph (a) to specifically refer to JRA requests. Also, DHS proposes to add paragraph (b) to account for requests for Privacy Act records that are covered by a Government-wide SORN for which one Federal Agency writes the policy governing the subject records. In some cases, although DHS may have copies of such records, the Federal Agency that writes the policy for such records also has physical custody over the original records and retains authority over the records. As a general matter, a government-wide system of records is appropriate when one agency has government-wide responsibilities that involve administrative or personnel records maintained by other agencies. For example, the Office of Personnel Management has published a number of government-wide SORNs relating to the operation of the Federal Government's personnel programs. If records are sought that are covered by a Government-wide SORN and requested of DHS, DHS will consult or refer such request, only as applicable and necessary, to the corresponding agency having authority over such records for further processing. DHS will acknowledge to the requester that is referring the request to another agency or consulting with that agency when processing the request.

In addition, DHS is proposing to add additional language to current paragraph (b), now proposed paragraph (c), to address circumstances where the request does not adequately describe the records sought. This additional language comports with 6 CFR 5.3(c) for consistency with FOIA requests being made.

Further, DHS proposes changes to current paragraph (c), now proposed paragraph (d), regarding payment of fees to comport with procedures for payment for fees processed under the FOIA pursuant to 6 CFR 5.11.

Also, DHS proposes to amend paragraph (e), now proposed paragraph (f), to further clarify, consistent with 5 U.S.C. 552a(h), that a court of competent jurisdiction can determine an individual to be incompetent ''due to physical or mental incapacity or age.'' Currently, the regulations only refer to a court's determination of incompetence but lacks this additional detail that is included in the statute.

Finally, DHS proposes to amend paragraph (f), now proposed paragraph (g), by adding a procedure by which a requester may submit proof that a third party is deceased (*e.g.,* a copy of a death certificate or an obituary) and therefore no longer has any Privacy Act rights. Further, DHS is proposing to give each Component flexibility in requiring more information, if necessary, depending on the record, to verify that a third party has consented to disclosure.

Section 5.22 Responsibility for Responding to Requests for Access to Records

DHS is proposing to amend this section to be consistent with Subpart A. Proposed paragraph 5.22(c) would now include a reference to the JRA, as well as including references to 6 CFR 5.4(d) and (e). DHS would eliminate existing paragraphs 5.22(e) and (f) as duplicative, but include in paragraph 5.22(c) some language originally provided for in existing paragraph 5.22(e).

Finally, pursuant to 5 U.S.C. 552a(f)(3), DHS proposes to amend existing paragraph (f), now paragraph (d), release of medical records, to provide more detail on when medical records may be released to the subject. In particular, DHS proposes to provide more detail on what special procedures DHS will follow when it receives an access request for medical records that include psychological records, and DHS determines that direct release of such records is likely to adversely affect the individual who is requesting access, such that direct release would be reasonably likely to cause harm or endanger physical life or safety of the subject individual or others. Further, it must be acknowledged that this provision applies to Privacy Act access requests. Some components may rely on other additional regulations, and other implementing agency practices and policies derived from such regulations, which may establish separate, special procedures for such purposes. For instance, medical records held by covered entities within the U.S. Coast Guard (USCG) are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The USCG follows the U.S. Department of Health and Human Services' implementing regulations at 44 CFR parts 160 and 164, as implemented in the Department of Defense's Manual 6025.18, including special rules for accessing protected health information related to substance abuse disorder programs. Finally, DHS proposes to eliminate the requirement that final review and decision on appeals of disapprovals of direct release will rest with the General Counsel, but rather to rely generally on subsection 5.25 for administrative appeals.

Section 5.23 Responses to Requests for Access to Records

DHS is proposing to amend this section to be consistent with the similar provision in Subpart A with respect to responding to FOIA requests, including providing an acknowledgement letter and an assigned individualized tracking number if the request will take longer than 10 working days to process, since DHS processes Privacy Act requests under the FOIA as well, and responding within 20 working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. *See* 6 CFR 5.6. Further, proposed paragraph 5.23(a) references the JRA. Finally, it was noted in this section that for purposes of responding to a JRA access request, a covered person is subject to the same limitations, including exemptions and exceptions, as an individual is subject to

under section 552a of title 5, United States Code, when pursuing access to records.

Section 5.24 Classified Information

DHS is proposing to amend this section to consolidate current paragraph 5.22(e) and this section. The resulting text would be consistent with the similar provision at 6 CFR 5.4(e).

Section 5.25 Administrative Appeals for Access Requests

DHS is proposing to amend the title of this section to be more specific regarding the types of appeals processed by DHS under this section, because administrative appeals on amendment requests are governed by section 5.26(c). Also, DHS is proposing to amend this section to be consistent with the similar provision in Subpart A on access appeals, including providing that DHS will make a decision on an appeal in writing generally twenty (20) working days after receipt unless the time limit for responding to an appeal may be extended provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met. Further, similar to DHS's FOIA regulations at 6 CFR 5.8(a), an appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 90 working days after the date of the component's response. Also, DHS is also making clear in 5.25(a) that any appeal may be directed to either a Component Appeals Officer or to DHS's Office of the General Counsel. The currently regulations only allow an appeal to the Office of the General Counsel or designee. Finally, DHS is proposing to add references to the JRA.

Section 5.26 Requests for Amendment or Correction of Records

DHS is proposing to amend this section to be consistent with Subpart A. Further, DHS is proposing to add references to the JRA. DHS proposes to note in this section, consistent with the JRA, that for purposes of responding to a JRA amendment request, a covered person is subject to the same limitations, including exemptions and exceptions, as an individual is subject to under section 552a of title 5, United States Code, when pursuing access to records.

Section 5.27 Requests for an Accounting of Record Disclosures

DHS is proposing to amend this section to make clear that covered persons are not granted any rights under the JRA for requests for an accounting of record disclosures.

Section 5.28 Preservation of Records

DHS is proposing to amend this section to account for changes made to National Archives and Records Administration's General Records Schedule.

Section 5.29 Fees

DHS is proposing to amend this section to include references to the JRA. In addition, DHS is proposing to amend this section to make clear that fees for access requests granted in full under the Privacy Act are limited to duplication fees, which are chargeable to the same extent that fees are chargeable under the DHS FOIA regulations. An access request not granted in full under the Privacy Act will be processed under the FOIA and will subject to all fees chargeable under the applicable FOIA regulations.

Section 5.30 Notice of Court-Ordered and Emergency Disclosures

DHS is proposing to amend this section to provide more detail and further clarification on when Privacy Act protected information may be disclosed pursuant to a court order under subsection 552a(b)(11) of the Privacy Act. Changes to this section are modeled after the Social Security Administration's regulation on disclosures under court order, found at 20 CFR 401.180. *See also* 72 FR 20935, 20937–38 (Apr. 27, 2007). For instance, this section, as amended, would provide further details on how a court is defined for purposes of this subpart, what conditions must be satisfied to be considered an order to qualify as a court order, how DHS interprets the term ''court of competent jurisdiction,'' and the conditions that must be met for disclosure under a court order of competent jurisdiction. In general, the Privacy Act authorizes the Department to disclose Privacy Act protected information to a third party pursuant to a court order by a court of competent jurisdiction. When information is used in a court proceeding, it usually becomes part of the public record of the proceeding and its confidentiality often cannot be protected in that record. Much of the information that the component collects and maintains in our records on individuals is especially sensitive. Therefore, the component would follow the conditions and rules in paragraphs (e) through (h) of this section in deciding whether the component may disclose information in response to an order from a court of competent jurisdiction.

Section 5.31 Security of Systems of Records

DHS proposes no substantives changes to this section.

Section 5.32 Contracts for the Operation of Systems of Records

DHS proposes to change the title of this section and make minor edits to conform with the statutory language of the Privacy Act.

Section 5.33 Use and Collection of Social Security Numbers

DHS is proposing to amend this section to account for the passage of the Social Security Number Fraud Prevention Act of 2017, whereby the Department is not permitted to include Social Security numbers of an individual on any document sent by mail unless the Secretary determines that the inclusion of the number on the document is necessary. *See* Public Law 115–59 (Sept. 15, 2017).

Section 5.34 Standards of Conduct for Administration of the Privacy Act

DHS is proposing to amend this section, particularly by modifying paragraph (a) to conform to the language in the Privacy Act and by adding paragraph (j) whereby employees would not be permitted to disclose Privacy Act or JRA records unless permitted by 5 U.S.C. 552a(b).

Section 5.35 Sanctions and Penalties

DHS proposes to amend this section to reference the JRA, and to include the specific Privacy Act provisions that apply for civil remedies and criminal penalties.

Section 5.36 Other Rights and Services

DHS is proposing to amend this section to reference the JRA.

III. Regulatory Analyses

Executive Orders 12866 and 13563—Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly,

the rule has been reviewed by the Office of Management and Budget.

DHS has considered the costs and benefits of this proposed rule. Previously in this preamble, DHS has provided a section-by-section analysis of the provisions in this proposed rule and concludes this proposed rule does not impose additional costs on the public or the government. This proposed rule does not collect any additional fee revenues compared to current practices or otherwise introduce new regulatory mandates. The proposed rule's benefits include additional clarity for the public and DHS personnel with respect to DHS's implementation of the Privacy Act and JRA.

Unfunded Mandates Reform Act of 1995

This proposed 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. Therefore, no written statement was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). 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. DHS has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Based on the previous discussion in this preamble, DHS does not believe this proposed rule imposes any additional direct costs on small entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is not a major proposed rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804(2). The Office of Management and Budget's Office of Information and Regulatory Affairs has not found that this proposed rule is likely to 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.

National Environmental Policy Act

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

This proposed rule fits within categorical exclusion A3(a) ''Promulgation of rules . . . of a strictly administrative or procedural nature.'' Instruction Manual, Appendix A, Table 1. Furthermore, the proposed rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the proposed rule is categorically excluded from further NEPA review.

List of Subjects in 6 CFR Part 5

Classified Information, Courts, Freedom of information, Government employees, Privacy.

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

Title 6—Domestic Security

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 is revised to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301; 6 U.S.C. 142; DHS Del. No. 13001, Rev. 01 (June 2, 2020).

Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a and 552 note.

§ 5.2 [Amended]

■ 2. In § 5.2, remove the text, ''appendix I to this subpart.'' and add, in its place, the text ''Appendix A to Part 5.''

§ 5.3 [Amended]

■ 3. In § 5.3:

■ a. In paragraph (a)(1), remove the text, ''appendix I of this subpart.'' and add, in its place, the text ''Appendix A to Part 5.''.

■ b. In paragraph (b), remove the text, ''appendix I of this subpart'' and add, in its place, the text ''Appendix A to Part 5''.

§ 5.5 [Amended]

■ 4. In § 5.5:

■ a. In paragraph (a), in the first sentence, remove the text, ''Appendix I to this subpart'' and add, in its place, the text ''Appendix A to Part 5''.

■ b. In paragraph (e)(2), remove the text ''appendix I.'' and ''appendix I of this subpart.'' and add, in both places, the text ''Appendix A to Part 5.''

§ 5.8 [Amended]

■ 5. In § 5.8(a)(1), remove the text, ''appendix I to this subpart,'' and add, in its place, the text ''Appendix A to Part 5,''.

■ 6. Revise subpart B of Part 5 to read as follows:

SUBPART B—PRIVACY ACT

Sec.

5.20 General Provisions.
5.21 Requests for Access to Records.
5.22 Responsibility for Responding to Requests for Access to Records.
5.23 Responses to Requests for Access to Records.
5.24 Classified Information.
5.25 Administrative Appeals for Access Requests.
5.26 Requests for Amendment or Correction of Records.
5.27 Requests for an Accounting of Record Disclosures.
5.28 Preservation of Records.
5.29 Fees.
5.30 Notice of Court-Ordered and Emergency Disclosures.
5.31 Security of Systems of Records.
5.32 Contracts for the Operation of Systems of Records.

5.33 Use and Collection of Social Security Numbers.
5.34 Standards of Conduct for Administration of the Privacy Act.
5.35 Sanctions and Penalties.
5.36 Other Rights and Services.

SUBPART B—PRIVACY ACT

§ 5.20 General Provisions.

(a) *Purpose and scope.* (1) This subpart contains the rules that the Department of Homeland Security (Department or DHS) follows in processing records under the Privacy Act of 1974 (Privacy Act) (5 U.S.C. 552a) and under the Judicial Redress Act of 2015 (JRA) (5 U.S.C. 552a note).

(2) The rules in this subpart should be read in conjunction with the text of the Privacy Act and the JRA, 5 U.S.C. 552a and 5 U.S.C. 552a note, respectively (which provide additional information about records maintained on individuals and covered persons), and JRA designations issued in the **Federal Register**. The rules in this subpart apply to all records in systems of records maintained by the Department. These rules also apply to all records containing Social Security Numbers regardless of whether such records are covered by an applicable system of records maintained by the Department. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures by Department personnel and contractors. In addition, the Department processes all Privacy Act and JRA requests for access to records under the Freedom of Information Act (FOIA) (5 U.S.C. 552), following the rules contained in subpart A of this part, which gives requesters the benefit of both statutes.

(3) The provisions established by this subpart apply to all Department Components, as defined in paragraph (b)(1) of this section.

(4) DHS has a decentralized system for processing requests, with each component handling requests for its records.

(b) *Definitions.* As used in this subpart:

(1) Component means the office that processes Privacy Act and JRA requests for each separate organizational entity within DHS that reports directly to the Office of the Secretary.

(2) Request for access to a record means a request made under Privacy Act subsection (d)(1).

(3) Request for amendment or correction of a record means a request made under Privacy Act subsection (d)(2).

(4) Request for an accounting means a request made under Privacy Act subsection (c)(3).

(5) Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(6) Individual means, as defined by the Privacy Act, 5 U.S.C. 552a(a)(2), a citizen of the United States or an alien lawfully admitted for permanent residence. Also, an individual, for purposes of this subpart, but limited to the exclusive rights and civil remedies provided in the JRA, includes covered persons, as defined by the JRA, as a natural person (other than an individual) who is a citizen of a covered country, as designated by the Attorney General, with the concurrence of the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security.

(7) Record has the same meaning as contained in the Privacy Act, 5 U.S.C. 552a(a)(4), except that in cases covered by the JRA, the term ''record'' has the same meaning as contained in the JRA, 5 U.S.C. 552a note.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or designee thereof is authorized to make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(d) *Notice on Departmental use of (b)(1) exception.* As a general matter, when applying the (b)(1) exception for authorized disclosures within an agency on a need to know basis, the Department will consider itself a single entity, meaning that information may be disclosed between components of the Department under the (b)(1) exception.

(e) *Interim Retention of Authorities.* As an interim solution, all agencies and components under the Department will retain the necessary authority from their original purpose in order to conduct these necessary activities. This includes the authority to maintain Privacy Act systems of records, disseminate information pursuant to existing or new routine uses, and retention of exemption authorities under sections (j) and (k) of the Privacy Act, where applicable. This retention of an agency or component's authorities and information practices will remain in effect until this regulation is promulgated as a final rule, or the Department revises all systems of records notices. This retention of authority is necessary to allow components to fulfill their mission and purpose during the transition period of the establishment of the Department. During this transition period, the Department shall evaluate with the components the existing authorities and information practices and determine what revisions (if any) are appropriate and should be made to these existing authorities and practices. The Department anticipates that such revisions will be made either through the issuance of a revised system of records notices or through subsequent final regulations.

§ 5.21 Requests for Access to Records.

(a) *How made and addressed.* (1) DHS has a decentralized system for responding to Privacy Act and JRA requests, with each component designating an office to process records from that component.

(2) An individual may make a request for access to a Department of Homeland Security record about that individual covered by a DHS or Component system of records notice (SORN) by writing directly to the Department component that maintains the record at the address listed in appendix A to this part or via the internet at *http://www.dhs.gov/dhs-foia-request-submission-form.* A description of all DHS-wide and component SORNs may be found here: *https://www.dhs.gov/system-records-notices-sorns.*

(3) In most cases, a component's central FOIA office, as indicated in appendix A to this part, is the place to send a Privacy Act request. For records held by a field office of U.S. Customs and Border Protection, the U.S. Coast Guard, or other Department components with field offices other than the U.S. Secret Service, the requester must write directly to that U.S. Customs and Border Protection, Coast Guard, or other field office address, which can be found by calling the component's central FOIA office. Requests for U.S. Secret Service records should be sent only to the U.S. Secret Service central FOIA office. (4) Requests for records held by the Cybersecurity and Infrastructure Security Agency (CISA) should be sent to the DHS Privacy Office.

(5) DHS's FOIA website refers the reader to descriptions of the functions of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in Appendix A to part 5. These references can all be used by requesters to determine where to send their requests within DHS.

(6) An individual may also send a request to the Privacy Office, Mail Stop 0655, U.S. Department of Homeland

Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0655, or via the internet at *http://www.dhs.gov/dhs-foia-request-submission-form,* or via fax to (202) 343–4011. The Privacy Office will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought. For the quickest possible handling, the requester should mark both the request letter and the envelope ''Privacy Act Request'' or ''Judicial Redress Act Request.''

(b) *Government-wide SORNs.* A government-wide system of records is a system of records where one agency has regulatory authority over records in the custody of multiple agencies, and the agency with regulatory authority publishes a SORN that applies to all of the records regardless of their custodial location. If records are sought that are covered by a Government-wide SORN and requested of DHS, DHS will consult or refer such request, only as applicable and necessary, to the corresponding agency having authority over such records for further processing. DHS will acknowledge to the requester that it is referring the request to another agency or consulting with that agency when processing the request.

(c) *Description of records sought.* A requester must describe the records sought in sufficient detail to enable Department personnel to locate the system of records covering them with a reasonable amount of effort. Whenever possible, the request should describe the records sought, the time periods in which the requester believes they were compiled, the office or location in which the requester believes the records are kept, and the name or identifying number of each system of records in which the requesters believes they are kept. The Department publishes notices in the **Federal Register** that describe its components' systems of records. These notices can be found on the Department's website here: *https://www.dhs.gov/system-records-notices-sorns.* If a request does not adequately describe the records sought, DHS may at its discretion either administratively close the request or seek additional information from the requester. Requests for clarification or more information will be made in writing (either via U.S. mail or electronic mail whenever possible). Requesters may respond by U.S. Mail or by electronic mail regardless of the method used by DHS to transmit the request for additional information. To be considered timely, responses to requests for additional information must be postmarked or received by electronic mail within 30 working days of the postmark date or date of the electronic mail request for additional information. If the requester does not respond timely, the request may be administratively closed at DHS's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

(d) *Agreement to pay fees.* DHS and components shall charge for processing requests under the Privacy Act or JRA. DHS and components will ordinarily use the most efficient and least expensive method for processing requested records. DHS may contact a requester for additional information in order to resolve any fee issues that arise under this section. DHS ordinarily will collect all applicable fees before sending copies of records to a requester. If one makes a Privacy Act or JRA request for access to records, it will be considered a firm commitment to pay all applicable fees charged under section 5.29, up to $25.00. The component responsible for responding to a request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, an individual may specify a willingness to pay a greater or lesser amount. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(e) *Verification of identity.* When an individual makes a request for access to records about that individual, he or she must verify his or her identity. The individual must state his or her full name, current address, date and place of birth, and country of citizenship or residency. The individual must sign his or her request and provide a signature that must either be notarized or submitted by the requester under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization. An individual may obtain more information about this process at *http://www.dhs.gov/foia* or 1–866–431–0486. In order to help the identification and location of requested records, an individual may also voluntarily include other identifying information that are relevant to the request (*e.g.,* passport number, Alien Registration Number (A-Number)).

(f) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, for access to records about that individual, the individual submitting a request must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and country of citizenship or residency of the individual;

(2) The submitting individual's own identity, in the same manner as required in paragraph (e) of this section;

(3) That the submitting individual is the parent or guardian of the subject of the record, which may be proven by providing a copy of the subject of the record's birth certificate showing parentage or by providing a court order establishing guardianship; and

(4) That the submitting individual is acting on behalf of that individual that is the subject of the record.

(g) *Verification in the case of third-party information requests.* Outside of requests made pursuant to paragraph (f) of this section, if a third party requests records about a subject individual, the third party requester must provide verification of the subject individual's identity in the manner provided in paragraph (e) along with the subject individual's written consent authorizing disclosure of the records to the third party requester, or by submitting proof by the requester that the subject individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a third-party requester to supply additional information to verify that the subject individual has consented to disclosure or is deceased.

§ 5.22 Responsibility for Responding to Requests for Access to Records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for access to a record, and has possession of that record, is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only those records in its possession as of the date the component begins its search for them. If any other date is used, the component will inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for access or amendment to a record of that component.

(c) *Consultations, coordination, and referrals.* All consultations, coordination, and referrals for requests of records subject to the Privacy Act or JRA will follow the same process and procedures as described in 6 CFR 5.4(d),

including how to handle those requests that pertain to law enforcement information, as specified in 6 CFR 5.4(d)(2), and classified information, as specified in 6 CFR 5.4(d)(2) and (e). Further, whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under any relevant executive order concerning the classification of records, the receiving component will refer to § 5.24 of this Part for processing.

(d) *Release of medical records.* (1) Generally, an individual has the right to access his or her medical records maintained by the Department. Special procedures for requests from an individual who requests his or her medical records that include psychological records for which direct release may cause harm to the individual who is requesting access are set forth in paragraph (d)(2) of this section.

(2) If a request is made for access to medical records that include psychological records, and the component determines that direct release is likely to adversely affect the individual who is requesting access, such that direct release would be reasonably likely to cause harm or endanger physical life or safety of the subject individual or others, the decision to release records directly to the individual, or to grant indirect release, will be made by a component medical practitioner or other qualified designee. Components will make their best effort to consult the component medical practitioner in the first instance and utilize the qualified designee if the component medical practitioner is unavailable. If the component medical practitioner or qualified designee believes that direct release is likely to adversely affect the individual requesting access, the component will request the individual to provide the name and contact information of a representative who is capable of ameliorating the potential adverse effect. The representative may be a physician, other health professional, or other responsible individual who will be willing to review the record and inform the requester of its contents. Once provided, the component medical practitioner or designee will send the medical records to the individual's designated representative, and the component will inform the subject individual in writing (either via U.S. mail or electronic mail whenever possible) that the record has been sent to that individual's chosen representative. The representative does not have the discretion to withhold any part of your record. If a representative is not provided, the component medical practitioner or designee will discuss such records with the individual first, and will release the records to the individual thereafter.

(e) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily will notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(f) *Timing of responses to consultations and referrals.* All consultations and referrals received by DHS will be handled according to the date the Privacy Act or JRA access request was initially received by the first component or agency, not any later date.

(g) *Agreements regarding consultations and referrals.* Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to types of records.

§ 5.23 Responses to Requests for Access to Records.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) *Acknowledgements of requests.* Consistent with the procedures in Subpart A to this Part, a component will acknowledge the request and assign it an individualized tracking number if it will take longer than ten (10) working days to process. Components will include in the acknowledgement a brief description of the records sought to allow requesters to more easily keep track of their requests. Further, in the acknowledgment letter, the component will confirm the requester's agreement to pay fees under 6 CFR 5.21(d) and 5.29.

(c) *Grants of requests for access.* Consistent with the procedures in Subpart A to this Part, a component will have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances as defined by the FOIA and set out in 6 CFR 5.5(c). Once a component decides to grant a request for access to record(s) in whole or in part, it will notify the requester in writing. The component will inform the requester in the notice of any fee charged under 6 CFR 5.21(d) and 5.29 and will disclose records to the requester promptly upon payment of any applicable fee. The component will inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(d) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the requested record does not exist or cannot be located; or the record requested is not subject to the Privacy Act or JRA. Further, adverse determinations also include disputes regarding fees, or denials of a request for expedited processing. The denial letter will be signed by the head of the component, or the component head's designee, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and

(3) A statement that the denial may be appealed under 6 CFR 5.25(a) and a description of the requirements of 6 CFR 5.25(a).

(e) *JRA access requests.* For purposes of responding to a JRA access request, a covered person is subject to the same limitations, including exemptions and exceptions, as an individual is subject to under section 552a of title 5, United States Code, when pursuing access to records. The implementing regulations and reasons provided for exemptions can be found in Appendix C to 6 CFR part 5, titled DHS Systems of Records Exempt from the Privacy Act.

§ 5.24 Classified Information.

On receipt of any request involving classified information, the component will determine whether information is currently and properly classified and take appropriate action to ensure compliance with 6 CFR part 7. Whenever a request is made for access to a record that is covered by a system of records containing information that has been classified by or may be appropriate for classification by another component or agency under any applicable executive order, the receiving component will consult the component or agency that classified the information. Whenever a record contains information that has been derivatively classified by a component or agency because it contains information classified by another

component or agency, the component will consult the component or agency that classified the underlying information. Information determined to no longer require classification will not be withheld from a requester based on exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the DHS Office of the General Counsel or its designee, shall take appropriate action to ensure compliance with part 7 of this title.

§ 5.25 Administrative Appeals for Access Requests.

(a) *Requirements for filing an appeal.* An individual may appeal an adverse determination denying his or her request for access in any respect to the appropriate component Appeals Officer. For the address of the appropriate component Appeals Officer, an individual may contact the applicable component FOIA Requester Service Center or FOIA Public Liaison using the information in appendix A to Part 5, visit *www.dhs.gov/foia,* or call 1–866–431–0486. Alternatively, an individual may also appeal to the DHS Office of the General Counsel or its designee in writing, by mail or email indicated here *https://www.dhs.gov/office-general-counsel.* An appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 90 working days, consistent with the procedures in Subpart A to this Part, after the date of the component's response. An electronically filed appeal will be considered timely if transmitted to the Appeals Officer by 11:59:59 p.m. EST. The appeal should clearly identify the component determination (including the assigned request number if the requester knows it) that is being appealed and should contain the reasons the requester believes the determination was erroneous. For the quickest possible handling, an individual should mark both his or her appeal letter and the envelope ''Privacy Act Appeal'' or ''Judicial Redress Act Appeal.''

(b) *Adjudication of appeals.* The DHS Office of the General Counsel or its designee (*e.g.,* Component Appeals Officers) is the authorized appeals authority for DHS. On receipt of any appeal involving classified information, the Appeals Officer will consult with the Chief Security Officer and take appropriate action to ensure compliance with 6 CFR part 7. If the appeal becomes the subject of a lawsuit, the Appeals Officer is not required to act further on the appeal.

(c) *Appeal decisions.* Consistent with the procedures in Subpart A to this Part, the decision on an appeal will be made in writing generally twenty (20) working days after receipt. However, consistent with the procedures in Subpart A to this Part, the time limit for responding to an appeal may be extended provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform the requester of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, the requester will be notified in a written decision and his or her request will be reprocessed in accordance with that appeal decision. An adverse determination by the DHS Office of the General Counsel or its designee or Component Appeals Officer will be the final action of the Department.

(d) *Appeal necessary before seeking court review.* If an individual wishes to seek review by a court of any adverse determination or denial of a request by DHS within the allotted 20 working days to respond unless there are unusual or exceptional circumstances, that individual must first appeal it under this subpart. An appeal will not be acted on if the request becomes a matter of litigation.

§ 5.26 Requests for Amendment or Correction of Records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, an individual may make a request for amendment or correction of a record of the Department about that individual by writing directly to the component that maintains the record, following the procedures in section 5.21. The request should identify each record in question, state the amendment or correction requested, and state the reason why the requester believes that the record is not accurate, relevant, timely, or complete. The requester may submit any documentation that he or she thinks would support his or her request. If the individual believes that the same record is in more than one system of records, he or she should state that and address his or her request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving a request for amendment or correction of records, a component will send the requester a written acknowledgment of its receipt of the request, and it will promptly notify the requester whether the request is granted or denied. If the component grants the request in whole or in part, it will describe the amendment or correction made and will advise the requester of his or her right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies the request in whole or in part, it will send the requester a letter signed by the head of the component, or the component head's designee, that will state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on his or her appeal.

(c) *Appeals.* Within 90 working days after the date of the component's response, the requester may appeal a denial of a request for amendment or correction to the Component Appeals Officer or the DHS Office of the General Counsel or its designee. The Component Appeals Officer or the DHS Office of the General Counsel or its designee must complete its review and make a final determination on the requester's appeal no later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review unless good cause is shown, and communicated to the individual, for which the 30-day period may be extended for an additional 30 days. If the appeal is denied, the requester will be advised of his or her right to file a Statement of Disagreement as described in paragraph (d) of this section and of his or her right under the Privacy Act, 5 U.S.C. 552a(d)(3), for court review of the decision. If an individual wishes to seek review by a court of any adverse determination or denial of a request, that individual must first appeal it under this subpart. For purposes of responding to a JRA amendment request, a covered person is subject to the same limitations, including exemptions and exceptions, as an individual is subject to under section 552a of title 5, United States Code, when pursuing amendment to records. The implementing regulations and reasons provided for exemptions can be found in Appendix C to 6 CFR part 5, titled DHS Systems of Records Exempt from the Privacy Act.

(d) *Statements of Disagreement.* If an individual's appeal under this section is denied in whole or in part, that individual has the right to file a Statement of Disagreement, unless exempt, that states his or her reason(s) for disagreeing with the Department's

denial of his or her request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The individual's Statement of Disagreement must be sent to the component involved, which will place it in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record will, unless exempt, notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made or should have been made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the component will append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under the Privacy Act (5 U.S.C. 552a(j) or (k)) pursuant to a Final Rule published in the **Federal Register**.

§ 5.27 Requests for an Accounting of Record Disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b)(1) of this section), an individual may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about the requester, except to the extent the records are covered by the JRA. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. A request for an accounting should identify each record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in section 5.21.

(b) *Where accountings are not required.* Components are not required to provide accountings to the requester where they relate to:

(1) Disclosures for which accountings are, by statute (5 U.S.C. 552a(c)(1)), not required to be kept, such as disclosures that are made to officers and employees within the agency and disclosures that are required to be made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from systems of records that have been exempted from accounting requirements by a rulemaking pursuant to 5 U.S.C. 552a(j) or (k).

(c) *Appeals.* A requester may appeal a denial of a request for an accounting to the Component Appeals Officer or the DHS Office of the General Counsel or its designee in the same manner as a denial of a request for access to records (see § 5.25 of this part) and the same procedures will be followed.

§ 5.28 Preservation of Records.

Each component will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2. Records will not be disposed of while they are the subject of a pending request, appeal, lawsuit, or litigation or audit hold under the Act.

§ 5.29 Fees.

(a) Fees for access requests granted in full under the Privacy Act are limited to duplication fees, which are chargeable to the same extent that fees are chargeable under the 6 CFR part 5, subpart A. An access request not granted in full under the Privacy Act will be processed under the FOIA and will subject to all fees chargeable under the applicable FOIA regulations. Fees are not charged for processing amendment and accounting requests.

(b) DHS will not process a request under the Privacy Act or JRA from persons with an unpaid fee from any previous Privacy Act or JRA request to any Federal agency until that outstanding fee has been paid in full to the agency.

§ 5.30 Notice of Court-Ordered and Emergency Disclosures.

(a) *Court-ordered disclosures.* When the component discloses an individual's information covered by a system of records pursuant to an order from a court of competent jurisdiction, and the order is a matter of public record, the Privacy Act requires the component to send a notice of the disclosure to the last known address of the person whose record was disclosed. Notice will be given within a reasonable time after the component's receipt of the order, except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed. Notice will not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Court.* For purposes of this section, a court is an institution of the judicial branch of the U.S. Federal Government consisting of one or more judges who seek to adjudicate disputes and administer justice. Entities not in the judicial branch of the Federal Government are not courts for purposes of this section.

(c) *Court order.* For purposes of this section, a court order is any legal process which satisfies all the following conditions:

(1) It is issued under the authority of a Federal court;

(2) A judge or a magistrate judge of that court signs it;

(3) It commands or permits DHS to disclose the Privacy Act protected information at issue; and

(4) The court is a court of competent jurisdiction.

(d) *Court of competent jurisdiction.* It is the view of DHS that under the Privacy Act the Federal Government has not waived sovereign immunity, which precludes state court jurisdiction over a Federal agency or official. Therefore, DHS will not honor state court orders as a basis for disclosure, unless DHS does so under its own discretion.

(e) *Conditions for disclosure under a court order of competent jurisdiction.* The component may disclose information in compliance with an order of a court of competent jurisdiction if—

(1) Another section of this part specifically allows such disclosure, or

(2) DHS, the Secretary, or any officer or employee of DHS in his or her official capacity is properly a party in the proceeding, or

(3) Disclosure of the information is necessary to ensure that an individual who is accused of criminal activity receives due process of law in a criminal proceeding under the jurisdiction of the judicial branch of the Federal Government.

(f) *In other circumstances.* DHS may disclose information to a court of competent jurisdiction in circumstances other than those stated in paragraph (e) of this section. DHS will make its decision regarding disclosure by balancing the needs of a court while preserving the confidentiality of information. For example, DHS may disclose information under a court order that restricts the use and redisclosure of the information by the participants in the proceeding; DHS may offer the information for inspection by the court *in camera* and under seal; or DHS may arrange for the court to exclude information identifying individuals from that portion of the record of the proceedings that is available to the public.

(g) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting the health or safety of an individual, the component will notify the individual to whom the record pertains of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

(h) *Other regulations on disclosure of information in litigation.* See 6 CFR part 5, subpart C, for additional rules covering disclosure of information and records governed by this part and requested in connection with legal proceedings.

§ 5.31 Security of Systems of Records.

(a) *In general.* Each component will establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls will correspond to the sensitivity of the records that the controls protect. At a minimum, each component's administrative and physical controls will ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Procedures required.* Each component will have procedures that restrict access to records to only those individuals within the Department who must have access to those records to perform their duties and that prevent inadvertent disclosure of records.

§ 5.32 Contracts for the Operation of Systems of Records.

As required by 5 U.S.C. 552a(m), any approved contract for the operation of a system of records to accomplish an agency function will contain the standard contract requirements issued by the General Services Administration to ensure compliance with the requirements of the Privacy Act for that system. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements.

§ 5.33 Use and Collection of Social Security Numbers.

Each component will ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege because of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their Social Security numbers must be informed of:

(1) Whether providing Social Security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of Social Security numbers; and

(3) The uses that will be made of the numbers.

(c) Including Social Security numbers of an individual on any document sent by mail is not permitted unless the Secretary determines that the inclusion of the number on the document is necessary.

§ 5.34 Standards of Conduct for Administration of the Privacy Act.

Each component will inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions referenced in § 5.35. Unless otherwise permitted by law, the Department will:

(a) Maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the Component or the Department that is required to be accomplished by statute or by executive order of the President;

(b) Collect information about an individual directly from that individual whenever practicable and when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Department intends to use the information;

(3) The routine uses the Department may make of the information; and

(4) The effects on the individual, if any, of not providing the information;

(d) Ensure that the component maintains no system of records without public notice and that it notifies appropriate Department officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the Department in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Disclose Privacy Act or JRA records only as permitted by 5 U.S.C. 552a(b).

§ 5.35 Sanctions and Penalties.

Each component will inform its employees and contractors of the Privacy Act's civil liability provisions (5 U.S.C. 552a(g)) and criminal penalty provisions (5 U.S.C. 552a(i)) as they apply to Privacy Act and JRA complaints.

§ 5.36 Other Rights and Services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act or JRA.

■ 7. Revise Appendix A to Part 5 to read as follows:

Appendix A to Part 5—FOIA/Privacy Act Offices of the Department of Homeland Security

I. For the following Headquarters Offices of the Department of Homeland Security, FOIA and Privacy Act requests should be sent to the Department's Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov.* The Headquarters Offices are:

Office of the Secretary
Office of the Deputy Secretary
Office of the General Counsel (OGC)
Office of the Executive Secretary (ESEC)
Office of Intelligence and Analysis (I&A)
Office of Legislative Affairs (OLA)
Office of Operations Coordination (OPS)
Office of Partnership and Engagement (OPE)
Office of Public Affairs (OPA)
Office of Strategy, Policy, and Plans (PLCY)
Citizenship and Immigration Services Ombudsman (CISOMB)
Civil Rights and Civil Liberties (CRCL)
Countering Weapons of Mass Destruction Office (CWMD)
Federal Protective Service (FPS)
Management Directorate (MGMT), including the Office of Biometric Identity Management (OBIM)
Military Advisor's Office (MIL)
Privacy Office (PRIV)
Science and Technology Directorate (S&T)

II. For the following components and Offices of the Department of Homeland Security, FOIA and Privacy Act requests should be sent to the component's FOIA Office, unless otherwise noted below. The components are:

Cybersecurity and Infrastructure Security Agency (CISA)

All requests should be sent to the Department's Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov*

Customs and Border Protection (CBP)

All requests should be sent to U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, Washington, DC 20004–3002, Phone: 202–325–0150, *https://foiaonline.gov/foiaonline/action/public/home.*

Federal Emergency Management Agency (FEMA)

All requests should be sent to FOIA Officer, 500 C Street SW, Room 840, Washington, DC 20472, Phone: 202–646–3323, Fax: 202–646–3347, Email: *fema-foia@fema.dhs.gov.*

Federal Law Enforcement Training Center (FLETC)

All requests should be sent to Freedom of Information Act Officer, Building #681, Suite B187, 1131 Chapel Crossing Road, Glico, GA 31524, Phone: 912–267–3103, Fax: 912–267–3113, Email: *fletc-foia@dhs.gov.*

Immigration and Customs Enforcement (ICE)

All requests should be sent to Freedom of Information Act Office, 500 12th Street SW, Stop 5009, Washington, DC 20536–5009, Phone: 866–633–1182, Fax: 202–732–4265, Email: *ice-foia@dhs.gov.*

Office of Inspector General

All requests should be sent to the OIG Office of Counsel, 245 Murray Lane SW, Mail Stop—0305, Washington, DC 20528–0305, Phone: 202–981–6100, Fax: 202–245–5217; Email: *foia.oig@oig.dhs.gov.*

Transportation Security Administration (TSA)

All requests should be sent to Freedom of Information Act Branch, 601 S. 12th Street, 3rd Floor, West Tower, TSA–20, Arlington, VA 20598–6020, Phone: 1–866–FOIA–TSA or 571–227–2300, Fax: 571–227–1406, Email: *foia@tsa.dhs.gov.*

U.S. Citizenship and Immigration Services (USCIS)

All requests should be sent to National Records Center, FOIA/PA Office, P. O. Box 648010, Lee's Summit, MO. 64064–8010 or through the USCIS FOIA Portal: *https://first.uscis.gov/;* General questions may be posed either through Phone (1–800–375–5283—USCIS Contact Center) or by Email (*uscis.foia@uscis.dhs.gov*).

U.S. Coast Guard (USCG)

All requests should be sent to Commandant (CG–611), 2701 Martin Luther King Jr. Ave., SE, Stop 7710, Washington, DC 20593–7710, Phone: 202–475–3522, Fax: 202–372–8413, Email: *efoia@uscg.mil*

U.S. Secret Service (USSS)

All requests should be sent to Freedom of Information Act and Privacy Act Branch, 245 Murray Lane, SW Building T–5, Washington, DC 20223, Phone: 202–406–6370, Fax: 202–406–5586, Email: *FOIA@usss.dhs.gov.*

Lynn Parker Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2021–21374 Filed 10–5–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0664; Project Identifier AD–2021–00158–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. 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 November 22, 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 NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information 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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0664; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA; phone: 206–231–3553; email: *Takahisa.Kobayashi@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–2021–0664; Project Identifier AD–2021–00158–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this 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 Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA; phone: 206–231–3553; email: *Takahisa.Kobayashi@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

The FAA has assessed the changes, including new or more restrictive requirements, that have been made to the AWLs related to fuel tank ignition prevention and the nitrogen generation system. The FAA is issuing this AD to address ignition sources inside the fuel tanks and increased flammability exposure of the fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane.

The FAA issued AD 2018–11–13, Amendment 39–19301 (83 FR 25894, June 5, 2018) (AD 2018–11–13), which applies to certain The Boeing Company Model 787–8 airplanes. AD 2018–11–13 requires, among other things, revising the inspection or maintenance program to incorporate an AWL. Since the FAA issued AD 2018–11–13, AWL No. 57–AWL–13, ''Inspection Requirements for In-Tank Fasteners and Edge Seal near Disbond Arrestment (DBA) Fastener Installations in Lightning Zone 2,'' has not been revised, therefore, this proposed AD would require the incorporation of AWL No. 57–AWL–13 that is also mandated by AD 2018–11–13. Incorporating the revision required by this proposed AD would terminate the requirements of paragraph (h) of AD 2018–11–13 for certain Model 787–8 airplanes only.

Airworthiness Limitations Based on Type Design

When a type certificate is issued for a type design, the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness, including its revision level, is part of that type design, as specified in 14 CFR 21.31(c). U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

The sum effect of these requirements is an obligation to comply with the ALS revision defined in the type design referenced in the manufacturer's conformity statement. Therefore, operators are required to maintain each airplane in accordance with the ALS revision that has been approved as part of the type design for that airplane. Operators are allowed to step up and comply with a ''later'' ALS revision published after the ''type design'' ALS revision. However, compliance with a later ALS revision is not a mandatory requirement.

This proposed AD applies to certain Model 787 airplanes. For those affected airplanes, this proposed AD would require revising the maintenance or inspection program by incorporating the information specified in the August 2018 revision of the Model 787 ALS and thereby, would mandate the ALS revision in the proposed AD.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 787 Special Compliance Items/Airworthiness Limitations, D011Z009–03–04, dated August 2018. This service information specifies AWLs that include airworthiness limitation instructions (ALIs) and critical design configuration control limitations (CDCCLs) related to fuel tank ignition prevention and the nitrogen generation system.

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**.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive AWLs.

This proposed AD would also require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and CDCCLs. Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative

method of compliance according to paragraph (j) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 121 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) 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:

The Boeing Company: Docket No. FAA–2021–0664; Project Identifier AD–2021–00158–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 22, 2021.

(b) Affected ADs

This AD affects AD 2018–11–13, Amendment 39–19301 (83 FR 25894, June 5, 2018) (AD 2018–11–13).

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, having line numbers (L/Ns) 1 through 871 inclusive, excluding L/N 688; and L/Ns 873, 875, 877, 878, 879, 881, and 883.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by significant changes, including new and more restrictive requirements, made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. The FAA is issuing this AD to address ignition sources inside the fuel tanks and increased flammability exposure of the fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 180 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Sections C through F of Boeing 787 Special Compliance Items/Airworthiness Limitations, D011Z009–03–04, dated August 2018. The initial compliance time for doing the airworthiness limitation instruction (ALI) tasks is at the times specified in paragraphs (g)(1) through (14) of this AD.

(1) For airworthiness limitation (AWL) No. 28–AWL–89, ''Fuel Quantity Data Concentrator (FQDC) Bracket Inspections,'' at the applicable time in paragraph (g)(1)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 28–AWL–89: Within 5 years or 10,000 flight cycles, whichever occur first after the most recent inspection was performed as specified in AWL No. 28–AWL–89.

(ii) For airplanes on which no initial inspection was performed: Within 5 years or 10,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(2) For AWL No. 57–AWL–01, ''Edge and Fillet Seals at Stringer and Spar Locations (Zone 2),'' at the applicable time in paragraph (g)(2)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–01: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–01.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(3) For AWL No. 57–AWL–02, ''Fasteners on Bare Carbon Fiber Reinforced Plastic (CFRP) Stripes,'' at the applicable time in paragraph (g)(3)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–02: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–02.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(4) For AWL No. 57–AWL–03, ''Head-in-tank Thin-Sleeved Interference-Fit Fasteners with Heads in the Fuel Tank'' at the applicable time in paragraph (g)(4)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–03: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–03.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original

standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(5) For AWL No. 57–AWL–05, ''Titanium Collars—BACC30CT Fasteners (Clearance Fit).'' at the applicable time in paragraph (g)(5)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–05: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–05.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(6) For AWL No. 57–AWL–06, ''Titanium Collars—BACC30CY Collars (Interference-Fit with Swaged Collars)'' at the applicable time in paragraph (g)(6)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–06: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–06.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(7) For AWL No. 57–AWL–07, ''Tension-rated Bolt Locations at Side of Body (SOB) and Nacelle Fittings'' at the applicable time in paragraph (g)(7)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–07: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–07.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(8) For AWL No. 57–AWL–08, ''Dielectric Top on Wing Surface,'' at the applicable time in paragraph (g)(8)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–08: Within 6 years or 12,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–08.

(ii) For airplanes on which no initial inspection was performed: Within 6 years or 12,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(9) For AWL No. 57–AWL–09, ''Inspection Requirements for Class 1A Seal Installations created as a result of Boeing Material Review Board,'' at the applicable time in paragraph (g)(9)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–09: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–09.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(10) For AWL No. 57–AWL–10, ''Inspection Requirements for In-Tank Fasteners near Side of Body (SOB) Rib and between Ribs 7 and 18,'' at the applicable time in paragraph (g)(10)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–10: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–10.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(11) For AWL No. 57–AWL–13, ''Inspection Requirements for In-Tank Fasteners and Edge Seal near Disbond Arrestment (DBA) Fastener Installations in Lightning Zone 2,'' at the applicable time in paragraph (g)(11)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–13: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–13.

(ii) For airplanes on which no initial inspection was performed: At the applicable time in paragraph (g)(11)(ii)(A) or (B) of this AD.

(A) For airplanes on which Boeing Service Bulletin B787–81205–SB570030–00 is applicable: Within 12 years or 24,000 flight cycles, whichever occurs first after the incorporation of Boeing Service Bulletin B787–81205–SB570030–00.

(B) For airplanes on which Boeing Service Bulletin B787–81205–SB570030–00 is not applicable: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(12) For AWL No. 57–AWL–14, ''Supplemental Inspection Requirements for Pre-cured Sealant Caps, Fillet Seals, and Edge Seals associated Stringer Splice Fitting Installation located at Right Wing Upper Panel Stringer No.3, just Outboard of the Side of Body Rib,'' at the applicable time in paragraph (g)(12)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–14: Within 12 years or 24,000 flight cycles whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–14.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(13) For AWL No. 57–AWL–15, ''Inspection Requirements for Pre-cured Sealant Caps, Injection Seals, Fillet Seals, and Edge Seals associated with the Wing Lower Panel Stringer Attachments to the Lower Side of Body (SOB) Chord,'' at the applicable time in paragraph (g)(13)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–15: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–15.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(14) For AWL No. 57–AWL–16, ''Supplemental Inspection Requirements for Edge Seals located at Left Wing Upper Panel Stringer No. 19, Between Ribs 8 and 9,'' at the applicable time in paragraph (g)(14)(i) or (ii) of this AD.

(i) For airplanes on which an inspection was performed as specified in AWL No. 57–AWL–16: Within 12 years or 24,000 flight cycles, whichever occurs first after the most recent inspection was performed as specified in AWL No. 57–AWL–16.

(ii) For airplanes on which no initial inspection was performed: Within 12 years or 24,000 flight cycles, whichever occurs first after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(h) No Alternative Actions, Intervals, or CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(i) Terminating Actions

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraph (h) of AD 2018–11–13, for Model 787–8 airplanes only.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards 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: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA; phone: 206–231–3553; email: *Takahisa.Kobayashi@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information 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.

Issued on August 7, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–21787 Filed 10–5–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0668; Project Identifier MCAI–2021–00457–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 series airplanes; Airbus SAS 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); and Airbus SAS Model A310 series airplanes. This proposed AD was prompted by reports of incorrect installation of the fire shut-off valves (FSOV) actuator, which was found to rotate around its pivot axis. This proposed AD would require a one-time detailed inspection of the FSOV actuator for rotation around its pivot axis, and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 22, 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 material that will be 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–2021–0668.

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–2021–0668; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

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:

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–2021–0668; Project Identifier MCAI–2021–00457–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the 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 proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan 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.* 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 2021–0106, dated April 15, 2021 (EASA AD 2021–0106) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A300, A310, A300–600 series airplanes, and A300–600ST airplanes. Model A300–600ST airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by reports of incorrect installation of the FSOV actuator, which was found to rotate around its pivot axis. The FAA is proposing this AD to address incorrect installation of the FSOV actuator. This condition, if not addressed, could lead to FSOV failure, and consequent risk of a temporary uncontrolled engine fire, possibly resulting in damage to, and reduced control of, the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0106 describes procedures for a one-time detailed inspection of the FSOV actuator for rotation around its pivot axis, and replacement. EASA AD 2021–0106 also describes procedures for reporting inspection results to Airbus.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0106 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use certain civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0106 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0106 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0106 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0106. Service information specified in EASA AD 2021–0106 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0668 after the FAA final rule is published.

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$10,880

* 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 proposed reporting requirement in this proposed 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 $10,880, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$28,000	$28,255

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 proposed AD is 2120–0056. The paperwork cost associated with this proposed 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 proposed 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 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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) 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 SAS: Docket No. FAA–2021–0668; Project Identifier MCAI–2021–00457–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(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 C4–605R Variant F airplanes.

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

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by reports of incorrect installation of the fire shut-off valves (FSOV) actuator, which was found to rotate around its pivot axis. The FAA is issuing this AD to address incorrect installation of the FSOV actuator. This condition, if not addressed, could lead to FSOV failure, and consequent risk of a temporary uncontrolled engine fire, possibly resulting in damage to, and reduced control of, the airplane.

(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 2021–0106, dated April 15, 2021 (EASA AD 2021–0106).

(h) Exceptions to EASA AD 2021–0106

(1) Where EASA AD 2021–0106 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0106 does not apply to this AD.

(3) Paragraph (4) of EASA AD 2021–0106 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(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.

(4) Where the service information referenced in EASA AD 2021–0106 specifies to send the FSOV actuator for repair if it moves (rotates around its pivot axis) during the inspection, this AD requires replacing any FSOV actuator that moves (rotates around its pivot axis) during the inspection with a serviceable actuator, as specified in EASA AD 2021–0106.

(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)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the 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 paragraphs (i)(2) and (h)(4) of this AD, if any service information referenced in EASA AD 2021–0106 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply

with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions 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

(1) For information about EASA AD 2021–0106 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.* 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–2021–0668.

(2) 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.*

Issued on August 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–21786 Filed 10–5–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0791; Project Identifier AD–2021–00716–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–20–13, which applies to certain General Electric Company (GE) CF6–80A and CF6–80C model turbofan engines. AD 2020–20–13 requires ultrasonic inspection (UI) of high-pressure turbine (HPT) stage 1 and stage 2 disks and replacement of any HPT stage 1 or stage 2 disk that fails the inspection. Since the FAA issued AD 2020–20–13, the manufacturer determined that the requirement to perform UI of affected HPT stage 1 and stage 2 disks should be expanded to include an additional population of affected HPT stage 1 and stage 2 disks. This proposed AD would retain the required UI while expanding the population of affected HPT stage 1 and stage 2 disks. 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 November 22, 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 NPRM, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0791; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; fax: (781) 238–7199; email: *Sungmo.D.Cho@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–2021–0791; Project Identifier AD–2021–00716–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 the 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 we receive about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this 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 Sungmo Cho, 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.

Background

The FAA issued AD 2020–20–13, Amendment 39–21269 (85 FR 63193, October 7, 2020), (AD 2020–20–13), for certain GE CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F model turbofan engines. AD 2020–20–13 was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's determination to expand the population of affected HPT disks. AD 2020–20–13 retains the required inspections of AD 2018–15–04 (83 FR 43739; August 28, 2018), while expanding the population of affected HPT disks. The agency issued AD 2020–20–13 to prevent failure of the HPT stage 1 disk (CF6–80C2 engines) and the HPT stage 2 disk (CF6–80C2 and CF6–80A engines).

Actions Since AD 2020–20–13 Was Issued

Since the FAA issued AD 2020–20–13, the manufacturer discovered an error in the service information and determined that the requirement to perform UI of affected HPT stage 1 and 2 disks should be expanded to include an additional population of HPT stage 1 and stage 2 disks. GE, therefore, revised its service information to include the additional affected HPT stage 1 and stage 2 disks.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE CF6–80C Service Bulletin (SB) 72–1562 R05, dated March 19, 2021 (GE SB 72–1562). The SB specifies procedures for UI of CF6–80C2 turbofan engine HPT stage 1 and 2 disks. The FAA also reviewed GE CF6–80A SB 72–0869 R03, dated March 19, 2021 (GE SB 72–0869). This SB specifies procedures for UI of CF6–80A turbofan engine HPT stage 2 disks. 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**.

Proposed AD Requirements in This NPRM

This proposed AD would retain all the requirements of AD 2020–20–13. This proposed AD would require UI of HPT stage 1 and stage 2 disks and replacement of any HPT stage 1 or stage 2 disk that fails the inspection. This proposed AD would also expand the applicability to include an additional population of affected HPT stage 1 and 2 disks.

Differences Between This Proposed AD and the Service Information

GE SB 72–1562 and GE SB 72–0869 specify that information, including the disk part number, disk serial number, accumulated cycles to date, and documented results of the inspection must be sent to GE Aviation Fleet Support. This proposed AD would not mandate sending information to GE Aviation Fleet Support.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,512 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
UI of HPT stage 1 and stage 2 disks	10 work-hours × $85 per hour = $850	$0	$850	$1,285,200

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed 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 CF6–80C2 HPT stage 1 disk	0.25 work-hours × $85 per hour = $21.25	$799,700	$799,721.25
Replace CF6–80C2 HPT stage 2 disk	0.25 work-hours × $85 per hour = $21.25	364,600	364,621.25
Replace CF6–80A HPT stage 2 disk	0.25 work-hours × $85 per hour = $21.25	344,000	344,021.25

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the 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:

■ a. Removing Airworthiness Directive 2020–20–13, Amendment 39–21269 (85 FR 63193, October 7, 2020); and

■ b. Adding the following new airworthiness directive:

General Electric Company: Docket No. FAA–2021–0791; Project Identifier AD–2021–00716–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by November 22, 2021.

(b) Affected ADs

This AD replaces AD 2020–20–13, Amendment 39–21269 (85 FR 63193, October 7, 2020).

(c) Applicability

This AD applies to General Electric Company (GE) CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F model turbofan engines with high-pressure turbine (HPT) disks with serial numbers listed in Tables 1 and 2 of Appendix A, paragraph 4., in GE CF6–80C2 Service Bulletin (SB) 72–1562 R05, dated March 19, 2021 (GE SB 72–1562), and Table 1 of Appendix—A, paragraph 4., in GE CF6–80A SB 72–0869 R03, dated March 19, 2021 (GE SB 72–0869).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's determination to expand the population of affected HPT disks. The FAA is issuing this AD to prevent failure of the HPT stage 1 disk (CF6–80C2 engines) and the HPT stage 2 disk (CF6–80C2 and CF6–80A engines). The unsafe condition, if not addressed, could result in an uncontained HPT disk 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) After the effective date of this AD, perform an ultrasonic inspection (UI) for cracks in HPT stage 1 and stage 2 disks on the CF6–80C2 turbofan engine at each piece-part exposure using the Accomplishment Instructions, paragraph 3.A.(2), of GE SB 72–1562.

(2) After the effective date of this AD, perform a UI for cracks in HPT stage 2 disks on the CF6–80A turbofan engine at each piece-part exposure using the Accomplishment Instructions, paragraph 3.A.(2), of GE SB 72–0869.

(3) If any disk fails the inspection required by paragraph (g)(1) or (2) of this AD, replace the disk with a part eligible for installation before further flight.

(h) No Reporting Requirements

The reporting requirements specified in the Accomplishment Instructions, paragraphs 3.A.(2)(c) and 3.A.(2)(f), of GE SB 72–1562, and paragraph 3.A.(3), of GE SB 72–0869, are not required by this AD.

(i) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is an HPT stage 1 or stage 2 disk:

(i) That has been inspected in accordance with paragraph (g)(1) or (2) of this AD and a crack or rejectable indication was not found; or

(ii) With a serial number not listed in Tables 1 and 2 of Appendix A, paragraph 4., in GE SB 72–1562, and Table 1 of Appendix—A, paragraph 4., in GE SB 72–0869.

(2) For the purpose of this AD, ''piece-part exposure'' of the HPT stage 1 or stage 2 disk is the separation of that HPT disk from its mating rotor parts within the HPT rotor module (thermal shield and HPT stage 1 and stage 2 disk, respectively).

(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 paragraph (k)(1) of this AD. 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

(1) For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; fax: (781) 238–7199; email: *Sungmo.D.Cho@faa.gov*.

(2) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com*. You may view this referenced 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.

Issued on September 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–21643 Filed 10–5–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AR19

Social Security Number Fraud Prevention Act of 2017 Implementation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to amend its regulations implementing the Privacy Act. These revisions would clarify and update the language of procedural requirements pertaining to the inclusion of Social Security account numbers (SSN) on documents that the Department sends by mail. These revisions are also required by the Social Security Number Fraud Prevention Act of 2017, which restricts the inclusion of

SSNs on documents sent by mail by the Federal Government.

DATES: Comments must be received on or before December 6, 2021.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to RIN 2900–AR19–Social Security Number Fraud Prevention Act of 2017 Implementation. Comments received will be available at *www.regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Amy L. Rose, Program Analyst, VA Privacy Service, 005R1A, 811 Vermont Ave. NW, Washington, DC 20420, (202) 237–5070. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Social Security Number Fraud Prevention Act of 2017 (the Act) (Pub L. 115–59; 42 U.S.C. 405 note), which was signed on September 15, 2017, restricts federal agencies from including individuals' SSNs on documents sent by mail unless the head of the agency determines that the inclusion of the SSN on the document is necessary (section 2(a) of the Act). The Act requires agency heads to issue regulations specifying the circumstances under which inclusion of an SSN on a document sent by mail is necessary. These regulations, which must be issued not later than five years after the date of enactment, shall include instructions for the partial redaction of SSNs where feasible, and shall require that SSNs not be visible on the outside of any package sent by mail (section 2(b) of the Act). This proposed rule would revise the Department regulations under the Privacy Act (38 CFR 1.575), consistent with these requirements in the Act. The proposed revisions would clarify the language of procedural requirements pertaining to the inclusion of SSNs on documents that the Department sends by mail.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is that the regulation only governs the circumstances under which the Department includes SSNs in mail issued by the Department. The behavior of small entities is not addressed in the regulation and is therefore not impacted. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

List of Subjects in 38 CFR Part 1

Disability benefits, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 24, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR 1.575, as set forth below:

PART 1—GENERAL PROVISIONS

■ 1. Revise the authority citation for part 1 to read as follows:

Authority: 38 U.S.C. 5101, and as noted in specific sections.

■ 2. Amend § 1.575 by adding paragraph (d) to read as follows:

§ 1.575 Social Security Numbers in Veterans' Benefits Matters.

* * * * *

(d) A document the Department sends by mail may not include the social security number of an individual except as provided below:

(1) The social security number must be truncated to no more than the last four digits; or

(2) If truncation of the social security number is not feasible:

(i) The Senior Agency Official for Privacy, the Chief Privacy Officer, and the Social Security Number Advisory Board (SSNAB) must jointly determine that inclusion of the social security number on the document is necessary as required by law; to comply with another legal mandate; to identify a specific individual where no adequate substitute is available; or to fulfill a compelling Department business need;

(ii) The document that includes the complete social security number of an individual must be listed on the Complete Social Security Number Mailed Documents Listing on a publicly available website; and

(iii) No portion of the social security number may be visible on the outside of any mailing.

[FR Doc. 2021–21373 Filed 10–5–21; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2021–9; Order No. 5992]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent filing requesting

the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Six). This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 28, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Proposal Six
III. Notice and Comment
IV. Ordering Paragraphs

I. Introduction

On September 28, 2021, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Six.

II. Proposal Six

Background. The Postal Service estimates the mail processing costs avoided due to mailer workshare activities for First-Class Mail presort letters and cards using the First-Class Mail letters mail processing cost model. Petition, Proposal Six at 1. The Postal Service determines the avoided costs for each workshare discount through modeling of the typical mail processing flow of First-Class Mail presort letters and cards by rate category. *Id.*

Historically, the Postal Service has offered a single price for First-Class Mail nonautomation presort categories. *Id.* However, in Docket No. R2021–2, the Postal Service restructured its pricing for the First-Class Mail presort categories, creating separate prices for Nonmachinable 5-Digit letters, Nonmachinable 3-Digit Letters, Nonmachinable mixed area distribution center (MADC) Letters, Nonautomation Machinable automated area distribution center (AADC) Letters, and Nonautomation Machinable mixed automation area distribution center (MAADC) Letters.[2]

The Commission accepted the proposed changes to the Mail Classification Schedule associated with this new rate structure but determined that the Metered Letters benchmark was not appropriate for determining the costs avoided by the new Nonautomation Machinable Letters Mixed AADC and Nonmachinable Letters Mixed area distribution center (ADC) workshare discounts.[3] For this reason, the Commission directed the Postal Service develop a methodology to disaggregate the Metered Letters benchmark into the machinable and nonmachinable components within 90 days of Order No. 5937. *Id.*

Proposal. With Proposal Six, the Postal Service seeks to revise the First-Class Mail letters mail processing cost model to disaggregate metered mail into machinable and nonmachinable categories. Petition, Proposal Six at 2. Citing data limitations, the Postal Service proposes to disaggregate the costs between these pricing categories through modeling. *Id.* at 3. The Postal Service notes that ''[t]he same methodology that is used to disaggregate [In-Office Cost System]-derived mail processing unit costs for First-Class presorted letter costs by rate category is used to disaggregate metered mail letter costs by machinability in this proposal.'' *Id.* The Postal Service's adjusted model is included with the Petition. *See* Excel file USPS–FY20–10 FCM Letters Prop 6.xlsx.

Impact. The impacts of Proposal Six are outlined in Table 1 and Table 2 of the proposal. Petition, Proposal Six at 4–5. The Postal Service estimates that the worksharing related unit costs will be 13.123 cents for Machinable Metered Letters and 44.824 cents for Nonmachinable Metered Letters. *Id.* at 4. Avoided costs will decrease $0.001 for Automation Mixed AADC Letters and $0.002 for Nonautomation Machinable Mixed AADC Letters. *Id.* at 5. The Postal Service estimates $0.101 in avoided costs for Nonautomation Nonmachinable Mixed ADC Letters. *Id.*

III. Notice and Comment

The Commission establishes Docket No. RM2021–9 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Six no later than October 28, 2021. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2021–9 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), filed September 28, 2021.

2. Comments by interested persons in this proceeding are due no later than October 28, 2021.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2021–21757 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), September 28, 2021 (Petition).

[2] Docket No. R2021–2, United States Postal Service Notice of Market-Dominant Price Change, May 28, 2021, at 8–9.

[3] Docket No. R2021–2, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, July 19, 2021, at 82 (Order No. 5937).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2019–0698; FRL–7826.1–02–OAR]

RIN 2060–AV31

Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program; Supplemental Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's Significant New Alternatives Policy program, the Agency is proposing, as an

additional option, to list for a limited period of time certain substances in the foamblowing sector, extruded polystyrene: Boardstock and billet end-use, as acceptable, subject to narrowed use limits. This proposal supplements the Agency's June 12, 2020, proposal with respect to the proposed listings in the foam-blowing sector, taking into consideration public comments and information received since issuance of the initial proposal. In the June 12, 2020, proposal, EPA proposed to list three foam blowing agent blends as acceptable. In this supplemental proposal, EPA is proposing an additional approach to list these blends as acceptable, subject to narrowed use limits, in the foam blowing sector, extruded polystyrene: Boardstock and billet end-use, from the effective date of a final rule based on this supplemental proposal until January 1, 2023. The Agency is providing an opportunity for public comment on this additional approach for the listings in the foam blowing sector, as well as reopening the public comment period for the proposed listings in the foam blowing sector in the June 12, 2020, proposal. The Agency is not reopening for comment those other portions of the June 12, 2020, proposal which are addressed in a separate final rule issued May 6, 2021.

DATES: Comments on this supplemental proposal must be received on or before November 22, 2021. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on October 12, 2021. If a virtual hearing is held, it will take place on or before October 21, 2021 and further information will be provided on EPA's Stratospheric Ozone website at *www.epa.gov/snap.*

ADDRESSES: You may send comments, identified by docket identification (ID) number EPA–HQ–OAR–2019–0698, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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, EPA's full 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 EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* 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: Christina Thompson, Stratospheric Protection Division, Office of Atmospheric Programs (Mail Code 6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0983; email address: *thompson.christina@epa.gov.* Notices and rulemakings under EPA's Significant New Alternatives Policy program are available on EPA's Stratospheric Ozone website at *https://www.epa.gov/snap/snap-regulations.*

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I. General Information

A. Executive Summary and Background

Pursuant to the Significant New Alternatives Policy (SNAP) program, EPA is proposing to list three foam blowing agent blends as acceptable, subject to narrowed use limits, in the foam blowing sector, extruded polystyrene: Boardstock and billet end-use. This proposal supplements the Agency's June 12, 2020, Notice of Proposed Rulemaking (NPRM), hereafter referred to as the ''2020 NPRM'' (85 FR 35874), with respect to the proposal to list these blends as acceptable, taking into consideration public comments and information received since issuance of the initial proposal. In the 2020 NPRM, EPA proposed to list three foam blowing agent blends as acceptable. In this supplemental proposal, EPA is proposing an additional approach to list the following blends as acceptable, subject to narrowed use limits, for use in extruded polystyrene: Boardstock and billet (XPS):

- Blends of 40 to 52 percent hydrofluorocarbon (HFC)-134a and the remainder hydrofluoroolefin (HFO)-1234ze(E);
- Blends of 40 to 52 percent HFC-134a with 40 to 60 percent HFO-1234ze(E) and 10 to 20 percent each water and carbon dioxide (CO_2); and
- Blends with maximum of 51 percent HFC-134a, 17 to 41 percent HFC-152a, up to 20 percent CO_2, and one to 13 percent water.

If the approach discussed in this supplemental proposal is finalized, all three blends would be acceptable subject to a narrowed use limit for use in XPS from the effective date of a final rule based on this supplemental proposal until January 1, 2023, where other alternatives are not technically feasible for reasons of performance or

safety. EPA is taking comment on the proposed listings as well as the specific narrowed use limits discussed in this supplemental proposal. The Agency is also reopening the public comment period on the proposed acceptable listings for the same three foam blowing blends in the 2020 NPRM, in light of information that has become publicly available and included in the docket for this rulemaking after the comment period closed for that proposal.

In addition to listings for XPS, the 2020 NPRM included proposed listings of refrigerants for use in certain refrigeration and air conditioning end-uses, as well as a proposal to remove Powdered Aerosol E from the list of fire suppression substitutes acceptable subject to use conditions in total flooding applications. EPA is not reopening the comment period for those other portions of the 2020 NPRM which were addressed in a separate final rule (May 6, 2021; 86 FR 24444). Rather, this supplemental proposal relates only to the XPS listings. EPA intends to respond to comments on the 2020 NPRM's proposed listings for XPS together with comments on this supplemental proposal in a future final rule.

This supplemental proposal is not EPA's response to the *Mexichem Fluor, Inc.* v. *EPA* decision of the United States Court of Appeals for the District of Columbia Circuit (''the D.C. Circuit'').[1] In this supplemental proposal, as in the 2020 NPRM, EPA refers to listings made in a final rule issued on July 20, 2015. *See* 80 FR 42870 (''2015 Rule''). The 2015 Rule, among other things, changed the listings for certain HFCs and blends from acceptable to unacceptable in various end-uses in the aerosols, refrigeration and air conditioning, and foam blowing sectors. After a challenge to the 2015 Rule, the D.C. Circuit issued a partial vacatur of the 2015 Rule ''to the extent it requires manufacturers to replace HFCs with a substitute substance'' [2] and remanded the rule to EPA for further proceedings.[3] The D.C. Circuit also upheld EPA's listing changes as being reasonable and not ''arbitrary and capricious.'' [4] EPA intends to respond to the D.C. Circuit's decision in a future action.

The SNAP program implements section 612 of the Clean Air Act (CAA). Background on the SNAP program is provided in the 2020 NPRM.

For additional information on the SNAP program, visit the SNAP portion of EPA's Ozone Layer Protection website at *www.epa.gov/snap.* Copies of the full lists of acceptable substitutes for ozone depleting substances (ODS) in all industrial sectors are available at *www.epa.gov/snap/substitutes-sector.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the initial SNAP rulemaking published on March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. SNAP decisions and the appropriate **Federal Register** citations are found at *www.epa.gov/snap/snap-regulations.* Substitutes listed as unacceptable; acceptable, subject to narrowed use limits; or acceptable, subject to use conditions, are also listed in the appendices to 40 CFR part 82, subpart G.

B. Does this action apply to me?

The following list identifies regulated entities that may be affected by this proposed rule and their respective North American Industrial Classification System (NAICS) codes:

- All Other Basic Organic Chemical Manufacturing (NAICS 325199)
- Polystyrene Foam Product Manufacturing (NAICS 326140)

C. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in the preamble of this document:

AIHA—American Industrial Hygiene Association
ASTM—American Society for Testing and Materials
CAA—Clean Air Act
CAS Reg. No.—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CFR—Code of Federal Regulations
CO_2—Carbon Dioxide
ECCC—Environment and Climate Change Canada
EPA—United States Environmental Protection Agency
EPS—Expanded Polystyrene
EU—European Union
FR—Federal Register
FTOC—Rigid and Flexible Foams Technical Options Committee
GWP—Global Warming Potential
HF—Hydrofluoric acid
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
ICF—ICF International, Inc.
IPCC—Intergovernmental Panel on Climate Change
NAICS—North American Industrial Classification System
NFPA—National Fire Protection Association
NIOSH—National Institute for Occupational Safety and Health
NPRM—Notice of Proposed Rulemaking
NRC—National Research Council
ODP—Ozone Depletion Potential
ODS—Ozone Depleting Substances
OMB—United States Office of Management and Budget
OSHA—United States Occupational Safety and Health Administration
PEL—Permissible Exposure Limit
PIR—Polyisocyanurate
ppm—Parts Per Million
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act
SDS—Safety Data Sheet
SNAP—Significant New Alternatives Policy
STEL—Short-term Exposure Limit
UMRA—Unfunded Mandates Reform Act
UL—Underwriters Laboratories, Inc.
USGCRP—U.S. Global Change Research Program
VOC—Volatile Organic Compounds
WEEL—Workplace Environmental Exposure Limit
WMO—World Meteorological Organization
XPS—Extruded Polystyrene: Boardstock and Billet

II. What did EPA propose in the 2020 NPRM, including for extruded polystyrene: Boardstock and billet?

In the 2015 Rule, EPA changed the status of HFC-134a for use in XPS, from ''acceptable'' to ''acceptable subject to narrowed use limits for military or space- and aeronautics-related applications'' and ''unacceptable for all other uses as of January 1, 2021,'' and as ''unacceptable for all uses as of January 1, 2022.'' In another final rule issued December 1, 2016 (81 FR 86778), among other things, EPA revised the change of status dates for XPS for space- and aeronautics-related applications, such that they are ''acceptable subject to narrowed use limits from January 1, 2021, through December 31, 2024,'' and ''unacceptable as of January 1, 2025.'' The December 1, 2016 final rule also applied unacceptability determinations for foam blowing agents to closed cell foam products and products containing closed cell foam.

In the 2020 NPRM, EPA proposed to list three blends containing HFC-134a as acceptable blowing agents in XPS: Blends of 40 to 52 percent HFC-134a by weight and the remainder HFO-1234ze(E); blends of 40 to 52 percent HFC-134a with 40 to 60 percent HFO-1234ze(E) and 10 to 20 percent each water and CO_2 by weight; and blends with maximum of 51 percent HFC-134a, 17 to 41 percent HFC-152a, up to 20 percent CO_2 and 1 to 13 percent water. EPA also proposed to revise the unacceptable listing for blends of certain HFCs in XPS for consistency with the proposed acceptable listings for those blends of HFC-134a. Redacted submissions and supporting

[1] 866 F.3d 451 (D.C. Cir. 2017).

[2] 866 F.3d at 462.

[3] Later, the court issued a similar decision on portions of a similar final rule issued December 1, 2016. 81 FR 86778 (''2016 Rule''). See *Mexichem Fluor, Inc.* v. *EPA,* Judgment, Case No. 17–1024 (D.C. Cir. Apr. 5, 2019), 760 F. App'x 6 (Mem).

[4] *Mexichem Fluor,* 866 F.3d at 462–63.

documentation for these blends are provided in the docket for this proposed rule (EPA–HQ–OAR–2019–0698) at *https://www.regulations.gov.*[5] [6] [7]

In the 2020 NPRM, EPA proposed to list those three specific blends of HFC-134a as acceptable in XPS, stating that ''[t]hese blends have higher [global warming potentials] GWPs and are otherwise comparable or lower in risk than other alternatives listed as acceptable; however, EPA is taking this action because the Agency believes that other acceptable alternatives are not generally available for most needs under this end-use.'' 85 FR 35888.

EPA also stated in the 2020 NPRM that, in order for substitutes to be ''available'' in the XPS end-use, they must be capable of blowing foam that meets the technical needs of XPS products including density and ability to meet testing requirements of building codes and standards, such as for thermal efficiency, compressive strength, and flame and smoke generation (85 FR 35888). Further, EPA noted that the company that initially submitted the three blends to the SNAP program for review indicated their difficulty meeting requirements for insulation value (''R-value'') with neat [8] acceptable blowing agents such as HFO-1234ze(E), HFC-152a, and CO_2.[9] The submitter indicated that if in some cases it could meet R-value requirements with those neat blowing agents, these alternatives were not able to meet other requirements such as compressive strength, density and thickness, or fire test results. The submitter also identified challenges with meeting code requirements for XPS products manufactured with flammable substitutes (*e.g.,* HFC-152a, light saturated hydrocarbons C3-C6, and methyl formate) and provided examples of failed test results [10] (85 FR 35888).

Based on the evidence before the Agency at the time of the 2020 NPRM, EPA stated that it appeared that only one of the substitutes that the Agency believed at the time of the 2015 Rule would be available for use in XPS foam as of January 1, 2021, was in fact available, and that it likely could only be used to meet the needs for some portion of the XPS foams market.[11] Based on concerns about ensuring that the needs of the full XPS foams market in the United States could be met and not limiting the choice of acceptable substitutes to only one option, EPA proposed to list additional blowing agent options for XPS that have been proven to work for this end-use.

In the 2020 NPRM, EPA also proposed to revise the current unacceptable listing for blends of certain HFCs in XPS in appendix U to 40 CFR part 82, subpart G. The listing for unacceptable substitutes in XPS states that HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; and Formacel TI, Formacel B, and Formacel Z-6 are ''unacceptable as of January 1, 2021, except where allowed under a narrowed use limit.'' For consistency with the proposed acceptable listings, EPA proposed to revise this listing of unacceptable substitutes for XPS in appendix U to read that the substitutes are ''Unacceptable as of January 1, 2021 except where allowed under a narrowed use limit or where blends are specifically listed as acceptable.'' The 2020 NPRM further stated that EPA was not opening up for comment other aspects of the existing listing (85 FR 35889).

The 2020 NPRM also included proposals that are not affected by this supplemental proposal. Those were proposals for listing three refrigerants as acceptable, subject to narrowed use limits, for use in retail food refrigeration—medium-temperature stand-alone units for new equipment and for listing six refrigerants as acceptable, subject to use conditions, in certain types of new equipment for residential and light commercial air conditioning and heat pumps, as well as a proposal to remove Powdered Aerosol E from the list of fire suppression substitutes that are ''acceptable subject to use conditions'' in total flooding applications (85 FR 35874–75). The comment period for those portions of the proposal ended on July 27, 2020. This supplemental proposal does not reopen the comment period for those portions of the 2020 NPRM which were addressed in a separate final rule issued on May 6, 2021 (86 FR 24444).

III. What public comments and publicly available information has EPA included in the docket with respect to the proposed XPS listings since issuing the 2020 NPRM?

During the public comment period for the 2020 NPRM, EPA received comments with respect to the proposal to list three blends containing HFC-134a as acceptable blowing agents in XPS. EPA also received and found information related to the role of codes and standards for residential insulation and the availability of alternative foam blowing agents. These comments and additional information supplement the information available to the Agency at the time of the 2020 NPRM and are available in the public docket.

A. Public Comments

In this section of the preamble, EPA is summarizing certain relevant public comments that shared new information or suggested different approaches to listing the three proposed blends. EPA also received other public comments related to the proposed listings in the 2020 NPRM for three blends of HFC-134a for XPS that are not summarized below. The Agency intends to address all comments on the 2020 NPRM and on this supplemental proposal in any subsequent final rule.

Most of the public comments on foam blowing agents for XPS in the 2020 NPRM opposed listing the proposed blends as acceptable, while two manufacturers of XPS supported the proposed acceptable listings. Opposing commenters stated that there are other alternatives commercially available with lower GWP for use in XPS boardstock that are currently being used in other countries, such as Japan, Saudi Arabia, Canada, and member nations of the European Union (EU); and those commenters provided links to further information. Those commenters included one manufacturer of XPS, manufacturers of competing types of foam insulation (*e.g.,* polyisocyanurate [PIR] laminated boardstock, expanded polystyrene [EPS]) and their trade organizations, blowing agent producers, and environmental organizations. Two environmental organizations provided information on recent research into the use of CO_2 as a blowing agent for XPS. Some of the commenters also requested that EPA list additional blowing agents for XPS that were under the SNAP program's review at the time of the 2020

[5] Supporting Documentation for SNAP Rule 23 Listing of Blends of 40 to 52 Percent HFC-134a by Weight and the Remainder HFO-1234ze(E) in Extruded Polystyrene: Boardstock and Billet. Submission Received July 20, 2017. Docket ID EPA–HQ–OAR–2019–0698–0023.

[6] Supporting Documentation for SNAP Rule 23 Listing of Blends of 40 to 52 Percent HFC-134a with 40 to 60 Percent HFO-1234ze(E) and 10 to 20 Percent Each Water and CO_2 by Weight in Extruded Polystyrene: Boardstock and Billet. Submission Received September 24, 2018. Docket ID EPA–HQ–OAR–2019–0698–0024.

[7] Supporting Documentation for SNAP Rule 23 Listing of Blends with Maximum of 51 Percent HFC-134a, 17 to 41 Percent HFC-152a, up to 20 Percent CO_2 and One to 13 Percent Water in Extruded Polystyrene: Boardstock and Billet. Submission Received November 7, 2019. Docket ID EPA–HQ–OAR–2019–0698–0025.

[8] Individual, unblended blowing agents.

[9] DuPont, 2019b. December 17, 2019 Letter from DuPont Performance Building Solutions to EPA. Docket ID EPA–HQ–OAR–2019–0698–0008.

[10] DuPont, 2019b. *Op. cit.*

[11] In the 2020 NPRM, EPA further stated that the set of products that may be able to be manufactured with that substitute, HFC-152a, would account for a minority of the current market for XPS (85 FR 35888, footnote 54). As discussed further below, the statement that HFC-152a was being used alone may have been a misunderstanding.

NPRM. In contrast, the submitter of the three proposed blends commented that because of differences in XPS manufacturing and code requirements across jurisdictions, comparing XPS blowing agents between the U.S., Canada, and the EU is not appropriate. That commenter stated that they had patented low-GWP blends for the Japanese market, but that those blends could not meet the stricter fire codes in the North American market. A different U.S. XPS manufacturer commented that they had been using Formacel Z-6, a blend of HFC-152a, HFC-134a, and HFC-134, and requested that EPA, if listing the three proposed blends as acceptable in its final rule, clarify that the version of the Formacel Z-6 blend used in the commenter's products is acceptable; at the time of the 2020 NPRM, EPA had incorrectly understood that this company was using neat HFC-152a as their blowing agent.[12]

Some commenters mentioned that certain states have adopted regulations that control HFCs.[13] The submitter of the proposed blends specifically mentioned timelines imposed by state regulations prohibiting certain blowing agents in XPS as a reason why they needed to use the proposed blends. An environmental group also noted in its comments that to be ''fully compliant with the various state adoptions of the Significant New Alternatives Policy (SNAP) Program in the United States and Canadian Environmental Protection Act in Canada,'' as the submitter claims, the submitter would need to use already-approved substances.[14] Another manufacturer of XPS commented that the majority of the state laws that prohibit HFC-134a in XPS contemplate further regulatory action ''to conform'' state law to any federal SNAP requirement that approves a previously prohibited HFC blend for foam blowing. This commenter expressed concern that EPA's decisions in the rule could flow through to state law and that there could be inappropriate environmental and potentially anticompetitive impacts if EPA were to reach a conclusion (*i.e.,* finalize the proposed listings for the three blends in the 2020 NPRM) without knowledge of all U.S. products available in the market.

Commenters disagree as to whether flammability of substitutes currently listed as acceptable was of concern. Some commenters commented that flammability risks of blowing agents already listed as acceptable, and particularly of HFO-1234ze(E), were not significantly different from flammability risks for HFC-134a. In contrast, the original submitter of the proposed blends commented that during use of HFO-1234ze(E) without HFC-134a, they had ''industrial hygiene'' events where excessive hydrofluoric acid (HF) was generated due to decomposition of the blowing agent under heat and more cases of ''unplanned combustion''; they reported that these problems were resolved when using HFC-134a in the blend.

Multiple commenters representing manufacturers of EPS or of PIR foam insulation questioned statements in the preamble to the 2020 NPRM concerning codes and standards and how they relate to having sufficient options for the XPS end-use. For example, representatives of the EPS industry commented that the specifications of American Society for Testing and Materials (ASTM) Standard C578 are only required by building codes in certain situations, such as use above-grade. Commenters from the EPS industry stated that XPS products could still be sold as a different type classification of insulation under the ASTM C578 standard if they failed to meet the specifications for the type classifications for which XPS typically is used (*e.g.,* multiple types requiring an R-value of at least 5 per inch). Manufacturers of XPS foam responded to such comments in a presentation given to EPA,[15] stating that a change to a different type classification would impact their ability to fill their customer's specific application needs and reductions in R-value force an increase in product thicknesses to comply with building energy codes. A commenter from the EPS industry stated that there are a variety of flammability-related tests for insulation foam, including both testing for flame and smoke generation that is required by building codes (ASTM E84 or Underwriters Laboratories [UL] 723) and others ''for which alternative solutions exist in the code if the product fails these tests, such as FM [Factory Mutual] 4880, NFPA [National Fire Protection Association] 286, UL 1715, etc.''

One commenter suggested that a sunset date be included for any ''Acceptable'' formulations that include high-GWP chemicals. This commenter stated that that they recognize that change takes time and suggested that the blends proposed in the 2020 NPRM provide a phased approach to eventually eliminate high-GWP HFC foaming agents from XPS products in the United States. The commenter also suggested that if the EPA decides the three proposed blends should be added to the ''Acceptable'' list, the corresponding ''Unacceptable'' list should be updated to include a deadline for these formulas and not be left open ended. The submitter of the three proposed blends also mentioned timing as a concern in their comments on the 2020 NPRM, stating non-flammable blowing agent blends are necessary because of state regulatory timelines for transition away from prohibited components of blowing agents in XPS in some cases as early as January 1, 2021.

[12] This misunderstanding was the basis for the Agency's statements in the 2020 NPRM that ''one of the three manufacturers of XPS in the United States has had some success using neat HFC-152a as a blowing agent to manufacture some XPS products'' and ''only one of the substitutes that the Agency believed at the time of the 2015 Rule would be available for use in XPS foam as of January 1, 2021 is in fact available and likely could only be used to meet the needs for some portion of the XPS foams market.'' 85 FR at 35888. Subsequent to the 2020 NPRM, EPA has learned from public comments that, in fact, no U.S. XPS manufacturers are using neat HFC-152a.

[13] To provide additional context, EPA notes that several states have taken action to restrict the use of certain HFCs as foam blowing agents for XPS that would prohibit use of HFC-134a or blends thereof. To date, twelve of those states have issued final rules: California, Colorado, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Vermont, Virginia, and Washington. Maine, Rhode Island, Vermont and Virginia have established a compliance deadline of January 1, 2022; Delaware has a compliance deadline of September 1, 2021; Maryland has a compliance deadline of July 1, 2021; and the remaining six states have a compliance deadline of January 1, 2021.

[14] EPA is aware of Canadian regulations (the Ozone-Depleting Substances and Halocarbon Alternatives Regulations) which as of January 1, 2021, prohibit the import and the manufacture of a plastic foam or a rigid foam product in which a listed HFC (including HFC-134a) is used as a foaming agent (*i.e.,* blowing agent) if the GWP of the foaming agent is greater than 150. (Additional information is available about these regulations online at *https://pollution-waste.canada.ca/environmental-protection-registry/regulations/view?Id=129.*) The regulations include provisions to issue essential purpose permits that would allow for the manufacture or import of a foam product if the product will be used for an essential purpose and if a permit is specifically issued under the regulations for that purpose. Environment and Climate Change Canada (ECCC) issued essential purpose permits for the import and/or manufacture of three companies' brands of extruded polystyrene foam insulation boardstock with a foaming agent containing HFCs and with a GWP below specified value. One of these was an essential purpose permit expiring on December 31, 2022 for XPS using a foam blowing agent containing HFCs and with a GWP of 750 or less manufactured by DuPont; this description corresponds with the blends proposed in the 2020 NPRM and in this supplemental proposal for XPS. ECCC also issued essential purpose permits expiring on December 31, 2021 for XPS manufactured by Owens Corning and by Kingspan Insulation. The information pertaining to essential purpose permits issued by ECCC is available online at: *https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/permits/authorizations-ozone-depleting-substances.html.*

[15] DuPont, 2020a. August 23, 2020. DuPont Performance Building Solutions. SNAP Rule 23 Discussion with EPA.

That commenter stated that products that meet qualification testing with flammable blowing agents require longer development lead times. The submitter of the three proposed blends subsequently sent EPA a late comment, noting the other comment concerning a sunset date or deadline for the proposed blends and stating that they would support the inclusion of a two-year deadline for the blends in the final rule, where the blends would no longer be ''acceptable'' after the deadline. In this late comment, the submitter of the three proposed blends said ''[i]ncluding a deadline in the final rule could alleviate many of the concerns raised by commenters, as a deadline would significantly limit the scope of any alleged impacts of the rule.'' They also stated that they are ''committed and actively working to find solutions with further reduced [GWP],'' and that they ''view the SNAP Rule 23 blends as a critical, but not permanent, step in [their] GWP phasedown plan.'' [16] The EPA will address all comments received regarding these three blends in the XPS end-use on the 2020 NPRM and on this supplemental proposal in considering any final action on them.

B. Additional Information

The Agency has obtained additional information since issuance of the 2020 NPRM. Some of this is information provided by commenters, such as the names and websites of XPS manufacturers in Europe and Asia using low-GWP blowing agents and a link to a report, ''Final Scientific Report for DOE/EERE, A New Generation of Building Insulation by Foaming Polymer Blend Materials with CO_2'' (Industrial Science & Technology Network, Inc. 2016).[17] The information on the XPS manufacturers in Europe and Asia indicates that a number of XPS manufacturers globally are using foam-blowing agents that comply with regulations restricting their GWP to 150 or less; however, there is not corresponding information indicating that the same industry standards or code requirements apply in these countries as in the United States. The DOE/EERE report concerns an experimental technology for using CO_2 in XPS with improved thermal insulation values. The report indicates that the technology is not yet commercially available. EPA also has learned that the company Soprema, which manufactures XPS in Europe using CO_2, now operates a facility in Canada that uses a blowing agent with a GWP less than 50 to manufacture XPS.[18]

Other publicly available information included in the docket for this rulemaking after the 2020 NPRM includes the 2018 report of the Rigid and Flexible Foams Technical Options Committee (FTOC 2018). FTOC 2018 states that some reasons why CO_2 could not be adopted universally as a blowing agent include the following:

- Processing difficulties with CO_2 and even CO_2/oxygenated hydrocarbon or CO_2/hydrocarbon blends;
- The higher gaseous thermal conductivity leading to poorer thermal efficiency of the foam;
- Costs of conversion—including licensing constraints resulting from patents; and
- Loss of processing flexibility ruling out some board geometries completely.

FTOC 2018 also states,

> CO_2-based blends are now dominant in the European extruded polystyrene (XPS) industry either alone or blended with other blowing agents. . . . In North America where the lower lambda [*i.e.,* with higher thermal resistance and energy efficiency] product is required, HFCs still dominate. By contrast, much of the European XPS market is targeted at requirements, such as floor insulation, where its moisture resistance is particularly valuable. In these applications, board geometries are less critical.

In addition, since issuance of the 2020 NPRM, EPA has continued our review of submissions for new substitutes for use in XPS. On December 11, 2020, the Agency listed blends of 10 to 99 percent by weight HFO-1336mzz(Z) and the remainder HFC-152a as acceptable for use in XPS (85 FR 79863). Those blends have an ozone depletion potential (ODP) of zero, range in GWP from about three to 110, contain chemicals that are excluded from the definition of volatile organic compounds (VOC), are flammable depending on the specific composition of the blend, and are able to be used consistent with the workplace environmental exposure limits (WEELs) for HFC-152a and for HFO-1336mzz(Z). For more detailed information on the human health and environmental effects of these blends, see ''Protection of Stratospheric Ozone: Determination 36 for Significant New Alternatives Policy Program'' (85 FR 79863) and public docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov.* In addition, since issuance of the 2020 NPRM, EPA's SNAP program has received and is continuing its technical review of additional submissions of foam blowing agents for use in XPS.

IV. What is EPA proposing in this supplemental proposal?

Taking into consideration the information discussed in the 2020 NPRM, the public comments received on the 2020 NPRM and information available to EPA since issuance of that initial proposal, EPA is proposing to list the following three blends of HFC-134a as ''acceptable, subject to narrowed use limits,'' in XPS from the effective date of a final rule based on this supplemental proposal until January 1, 2023:

- Blends of 40 to 52 percent HFC-134a and the remainder HFO-1234ze(E);
- Blends of 40 to 52 percent HFC-134a with 40 to 60 percent HFO-1234ze(E) and 10 to 20 percent each water and CO_2; and
- Blends with maximum of 51 percent HFC-134a, 17 to 41 percent HFC-152a, up to 20 percent CO_2 and one to 13 percent water.

These are the same three blowing agent blends of HFC-134a that EPA proposed to list as ''acceptable'' in the 2020 NPRM. Through this supplemental proposal, EPA is offering an opportunity for comment on modifications to the listings for these three blends proposed in the 2020 NPRM as well as the specific narrowed use limits. As noted above, in light of information that has become publicly available and included in the docket after the comment period closed for the 2020 NPRM, we are also reopening the public comment period on the proposed listings in the 2020 NPRM for these same three blends—*i.e.,* listing the three proposed blends as ''acceptable'' and changing the unacceptability listing for HFC blends in XPS to allow for specific ''acceptable'' listings. You may find the proposed regulatory text at the end of this document.

A. Listing of Three Blends of HFC-134a as Acceptable, Subject to Narrowed Use Limits

Under SNAP, listings of substitutes as ''acceptable, subject to narrowed use limits,'' permit a narrowed range of use of a substitute within an end-use or sector. As described in the 1994 SNAP Framework Rule (Mar. 18, 1994) (59 FR 13044 at 13051), where EPA narrows uses, a substitute will be acceptable for use only in certain applications under SNAP, as where other alternatives are not technically feasible due to performance or safety requirements. Thus, narrowed use limits define in

[16] DuPont, 2020b. November 20, 2020 Letter from J. Hansbro, DuPont Performance Building Solutions, to C. Grundler and C. Newberg, EPA. Available in docket EPA–HQ–OAR–2019–0698.

[17] This report is in the docket for this rulemaking, EPA–HQ–OAR–2019–0986, and is available online at *https://www.osti.gov/servlets/purl/1244652.*

[18] *https://blog.soprema.ca/en/whats-new-with-sopra-xps.*

which end-uses and applications an otherwise unacceptable substitute may be used under SNAP.

In this supplemental proposal, EPA is proposing to list the three HFC-134a blends as ''acceptable, subject to narrowed use limits,'' because publicly available information that EPA has included in the docket supports consideration of this additional option as an alternative to the proposal to list them as ''acceptable'' without restriction in the 2020 NPRM. This information indicates that a new blowing agent is potentially available and others are likely to be available in the future that would result in overall risk to human health and the environment comparable to currently acceptable substitutes and lower than the overall risks of the proposed blends. Since issuance of the 2020 NPRM, EPA has listed another blowing agent as acceptable for use in XPS: Blends of 10 to 99 percent by weight HFO-1336mzz(Z) and the remainder HFC-152a. In addition, as commenters have noted, other blowing agents such as HFO-1234ze(E) and CO_2 are being used successfully for manufacturing XPS in other countries where there are requirements to use blowing agents with a GWP less than 150. Accordingly, EPA is proposing to include a narrowed use limit in the listing that would allow use under SNAP of the proposed blends in XPS from the effective date of a final rule based on this supplemental proposal until January 1, 2023, where other alternatives are not technically feasible for reasons of performance or safety. At the same time, EPA is proposing to list the three blends of HFC-134a as acceptable, subject to narrowed use limits, because we understand that U.S. XPS manufacturers are in the process of transitioning to other lower GWP blowing agents, and we understand that additional technical work is needed. For example, if an XPS manufacturer has not been using highly or moderately flammable blowing agents in the past, it will require additional time to test and adjust engineering controls to address the higher degree of flammability and the greater amount of HF that would be generated with the more flammable blowing agents. In addition, even with non-flammable blowing agents such as CO_2, additional time would be required to test and, if necessary, to adjust formulations or manufacturing processes, in order to meet performance requirements. Based on a late comment from one XPS manufacturer, we expect that it will take no more than two years from the original change of status date of January 1, 2021, for that work to be complete, such that these other blowing agents will be available and can meet the needs met by current XPS products.

EPA is proposing that the three proposed blends would be acceptable from the effective date of the final rule associated with this supplemental notice of proposed rulemaking—which we anticipate would be 30 days after publication of a final rule in the **Federal Register**—until January 1, 2023, to allow a limited time for fine-tuning of new formulations currently in development. This timing would also be consistent with a time period suggested in a late comment from the submitter of the three blends. We note that we may issue a final rule with a different time period *e.g.,* 18 or 36 months after January 1, 2021, for example, if comments and information submitted during the public comment period on this supplemental proposal indicate that a different time period would be reasonable.

The existing SNAP rules pertaining to narrowed use limits provide that users intending to adopt a substitute ''acceptable with narrowed use limits'' must ascertain that other alternatives are not technically feasible and document the results of their evaluation that showed the other alternatives to be not technically feasible and maintain that documentation in their files. 40 CFR 82.180(b)(3). This documentation, which does not need to be submitted to EPA unless requested to demonstrate compliance, ''shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes.'' 40 CFR 82.180(b)(3).

EPA is also reopening comment on the proposed ''acceptable'' listings for these three blends of HFC-134a from the 2020 NPRM, in light of information that has become publicly available and included in the public docket after the comment period closed for that proposal, including the listing of another blowing agent as acceptable for use in XPS (blends of 10 to 99 percent by weight HFO-1336mzz(Z) and the remainder HFC-152a).[19] Further, EPA requests comment on whether there are likely to be adequate options available by January 1, 2023, that would reduce overall risks to human health and the environment, and whether those options would prove to be technically feasible and sufficient in supply by that date to serve the full needs of the XPS foam market. If, taking all the relevant and available information into account, EPA were to conclude that there would not be adequate options, or that the options would not prove to be technically feasible or sufficient in supply, an acceptable, unrestricted listing without a sunset date, as proposed in the 2020 NPRM, might be more appropriate than a listing as ''acceptable subject to narrowed use limits'' or an ''acceptable'' listing with a sunset date.

In the 2015 Rule, EPA changed the status of certain HFCs and HFC blends from ''acceptable'' to ''unacceptable'' in XPS as of January 1, 2021, including HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof.[20] Recognizing that multiple steps needed to be taken to transition to other blowing agents, including research and testing, EPA provided several years for those actions prior to the change of status date of January 1, 2021. The Agency now anticipates that sufficient alternatives will be available and technically feasible for XPS by January 1, 2023. Thus, EPA is proposing to list additional blowing agent options for XPS that have been proven to work for this end-use on a limited basis by listing them as ''acceptable, subject to narrowed use limits'' from the effective date of a final rule based on this supplemental proposal until January 1, 2023.

EPA is taking comment on the proposed listings as well as the specific narrowed use limits discussed above. In particular, EPA requests comment on the appropriate time period for listing the blends as ''acceptable, subject to narrowed use limits.'' We also request comment on whether January 1, 2023, is a reasonable date or whether, as noted above, the Agency should consider an earlier or later date in the range of July 1, 2022 to January 1, 2024, and why. In addition, EPA is considering whether there are other possible approaches to issuing a time-limited acceptable listing for these three blends for use in the XPS end-use, such as adding an ''acceptable'' listing with a sunset date in the same range to the SNAP listings in 40 CFR part 82, subpart G (*e.g.,* listing as ''acceptable from the effective date of the final rule to January 1, 2023''). This

[19] In this regard, EPA notes that section IV.B of this supplemental proposal discusses the three proposed HFC-134a blends and how they compare to other foam blowing agents in the same end-use, including the most recently listed acceptable alternative.

[20] As noted above, the D.C. Circuit partially vacated and remanded the 2015 Rule while also upholding EPA's listing changes as being reasonable and not ''arbitrary and capricious.'' *Mexichem Fluor,* 866 F.3d at 462–63. This supplemental proposal is not EPA's response to the court's decision.

alternative approach would have the effect of listing these three blends as acceptable for a similar, limited time as for the proposal to list the blends as ''acceptable, subject to narrowed use limits,'' but the time limitation would not be expressed as a narrowed use limit. Under this alternative approach, the user would not need to ascertain further that other alternatives are not technically feasible, document the results of their evaluation that showed the other alternatives to be not technically feasible, or maintain that documentation in their files, unlike with narrowed use limits.[21] EPA solicits comments on this alternative approach.

B. What are the three proposed HFC-134a blends and how do they compare to other foam blowing agents in the same end-use?

EPA notes that the information in this section is similar to that provided in the 2020 NPRM (85 FR at 35887), but is updated to reflect the most recent listing of acceptable substitutes for XPS (December 11, 2020; 85 FR 79863). In addition, EPA has updated GWP values to use the 100-year GWP from the *Assessment of Ozone Depletion: 2018* (WMO, 2018) for certain compounds that did not have a GWP value published in the International Panel on Climate Change's Fourth Assessment Report (*e.g.,* HFOs, methyl formate).

EPA is proposing to list as ''acceptable subject to narrowed use limits'' (1) blends of 40 to 52 percent HFC-134a by weight and the remainder HFO-1234ze(E) for use in XPS (hereafter referred to as ''HFC-134a/HFO-1234ze(E) blends''); (2) blends of 40 to 52 percent HFC-134a with 40 to 60 percent HFO-1234ze(E) and 10 to 20 percent each water and CO_2 by weight for use in XPS (hereafter referred to as ''CO_2/water/HFC-134a/HFO-1234ze(E) blends''); and (3) blends with maximum of 51 percent HFC-134a, 17 to 41 percent HFC-152a, up to 20 percent CO_2 and 1 to 13 percent water (hereafter referred to as ''HFC-134a/HFC-152a/CO_2/water blends''). The components of the blends are co-blown and component percentages are by weight.

HFC-134a is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2). HFC-152a, also known as 1,1,difluoroethane, has CAS Reg. No. 75–37–6. HFO-1234ze is also known as HFC-1234ze, HFO-1234ze(E) or *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). CO_2 has CAS Reg. No. 124–38–9, and water has CAS Reg. No. 7732–18–5.

Redacted submissions and supporting documentation for these blends are provided in the docket related to this supplemental proposal (EPA–HQ–OAR–2019–0698) at *https://www.regulations.gov.* EPA performed assessments to examine the health and environmental risks of these substitutes. These assessments are available in the docket related to this supplemental proposal.[22] [23] [24]

Environmental information: The substitutes have ODPs of zero. Their components, HFC-134a, HFC-152a, HFO-1234ze(E), CO_2, and water have GWPs of 1,430,[25] 124,[26] one,[27] one,[28] and less than one,[29] respectively. If these values are weighted by mass percentage, then the blends range in GWP from about 580 to 750.[30] HFC-134a, HFC-152a, HFO-1234ze(E), CO_2, and water—components of the blends—are excluded from EPA's regulatory definition of VOC under CAA regulations that address the development of state implementation plans to attain and maintain the National Ambient Air Quality Standards. *See* 40 CFR 51.100(s).

Flammability information: The component HFC-152a is moderately flammable. The other components of the blends are non-flammable at standard temperature and pressure using the standard test method ASTM E681. However, at higher temperatures, such as the temperatures typical for extruding XPS, HFC-134a and HFO-1234ze(E) may be flammable, particularly at higher humidity levels.[31] The XPS manufacturer submitting the blends has found that blends containing 50 percent or more HFC-134a have acceptable flammable process stability under conditions of use (*i.e.,* XPS extrusion).[32]

Toxicity and exposure data: Potential health effects of these substitutes at lower concentrations include headache, nausea, drowsiness, and dizziness. The substitutes may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, they may cause central nervous system depression and affect respiration. The substitutes could cause asphyxiation, if air is displaced by vapors in a confined space. These health effects are common to many foam blowing agents.

The American Industrial Hygiene Association (AIHA) has established WEELs of 1,000 ppm as an eight-hour time-weighted average for HFC-134a and HFC-152a and 800 ppm for HFO-1234ze(E). CO_2 has an eight hour/day, 40 hour/week permissible exposure limit (PEL) of 5000 ppm in the workplace required by the Occupational Safety and Health Administration (OSHA), and a 15-minute recommended short-term exposure limit (STEL) of 30,000 ppm established by the National Institute for Occupational Safety and Health (NIOSH). EPA anticipates that users will be able to meet the AIHA WEELs, OSHA PEL, and NIOSH STEL and address potential health risks by following requirements and recommendations in the manufacturer's safety data sheets (SDSs) and other safety precautions common to the foam blowing industry.

Comparison to other substitutes in this end-use: HFC-134a/HFO-1234ze(E)

[21] I.e., under the alternative approach, it would not be necessary to meet the requirements of 40 CFR 82.180(b)(3).

[22] ICF, 2020a. Risk Screen on Substitutes in Extruded Polystyrene Boardstock and Billet Foam; Substitute: Blends of 40 to 52 Percent HFC-134a by Weight and the Remainder HFO-1234ze(E) (HFC-HFO Co-blowing Agents).

[23] ICF, 2020b. Risk Screen on Substitutes in Extruded Polystyrene Boardstock and Billet Foam; Substitute: Blends of 40 to 52 Percent HFC-134a with 40 to 60 Percent HFO-1234ze(E) and 10 to 20 Percent Each Water and CO_2 by Weight (Co-blowing Blends).

[24] ICF, 2020c. Risk Screen on Substitutes in Extruded Polystyrene Boardstock and Billet Foam; Substitute: Blends with Maximum of 51 Percent HFC-134a, 17 to 41 Percent HFC-152a, up to 20 Percent CO_2 and One to 13 Percent Water (Blends for Foam Blowing).

[25] IPCC, 2007. Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Solomon, S., Qin, D., Manning, M., Chen, Z., Marquis, M., Averyt, K.B., Tignor, M., and Miller, H.L. (eds.). Cambridge University Press. Cambridge, United Kingdom and New York, NY, USA. Available online at: *www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html.*

[26] IPCC, 2007.

[27] WMO (World Meteorological Organization), *Scientific Assessment of Ozone Depletion: 2018,* Global Ozone Research and Monitoring Project—Report No. 58, 588 pp., Geneva, Switzerland, 2018. Available at: *https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf.* In this action, the 100-year GWP values are used.

[28] IPCC, 2007.

[29] Sherwood et al 2018. This paper estimated that water vapor emitted near Earth's surface due to anthropogenic sources (*e.g.* irrigation) would have a GWP of -10^{-3} to 5×10^{-4}. ''The global warming potential of near-surface emitted water vapour,'' Steven C Sherwood, Vishal Dixit and Chryséis Salomez. *Environ. Res. Lett.* 13 (2018) 104006.

[30] A GWP of 580 corresponds to formulations containing approximately 40 percent HFC-134a and the remainder either HFO-1234ze(E); HFO-1234ze(E), CO_2, and water; or HFC-152a, CO_2, and water. A GWP of 750 corresponds to formulations containing 52 percent HFC-134a and the remainder either HFO-1234ze(E); HFO-1234ze(E), CO_2, and water; or alternatively containing 51 percent HFC-134a and the remainder HFC-152a, CO_2, and water.

[31] Bellair and Hood, 2019. Comprehensive evaluation of the flammability and ignitability of HFO-1234ze, R.J. Bellair and L. Hood, *Process Safety and Environmental Protection* 132 (2019) 273–284. Available online at *doi.org/10.1016/j.psep.2019.09.033.*

[32] DuPont, 2019a. August 23, 2019. Letter from DuPont Performance Building Solutions to EPA. Docket ID EPA–HQ–OAR–2019–0698–0007.

blends, CO_2/water/HFC-134a/HFO-1234ze(E) blends, and HFC-134a/HFC-152a/CO_2/water blends have ODPs of zero, comparable to all other acceptable substitutes in this end-use, such as blends of 10 to 99 percent by weight HFO-1336mzz(Z) and the remainder HFC-152a [33] (hereafter called ''HFO-1336mzz(Z)/HFC-152a blends''), HFC-152a, HFO-1234ze(E), methyl formate, and CO_2.

The GWPs of 580 to 750 for the HFC-134a/HFO-1234ze(E) blends, the CO_2/water/HFC-134a/HFO-1234ze(E) blends, and HFC-134a/HFC-152a/CO_2/water blends are higher than those for acceptable alternatives such as HFC-152a, HFO-1234ze(E), HFO-1336mzz(Z)/HFC-152a blends, light saturated hydrocarbons C3-C6 [34] and methyl formate, with respective GWPs of 124, less than one, [35] three to 110,[36] less than one,[37] and 11.[38]

Information regarding the flammability and toxicity of other acceptable alternatives is provided in the listing decisions previously made (see *https://www.epa.gov/snap/substitutes-polystyrene-extruded-boardstock-and-billet*). Flammability and toxicity risks of the HFC-134a/HFO-1234ze(E), the CO_2/water/HFC-134a/HFO-1234ze(E) blends, and HFC-134a/HFC-152a/CO_2/water blends are comparable to or lower than flammability and toxicity risks of other available substitutes in the same end-use. Toxicity risks can be minimized by use consistent with the AIHA WEELs, OSHA PEL, NIOSH STEL, recommendations in the manufacturer's SDSs, and other safety precautions common in the foam-blowing industry.

C. Status of Specific HFC Blends

The existing SNAP listings in appendix U to 40 CFR subpart G include an unacceptable listing for XPS for ''HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel B, and Formacel Z-6'' under which those alternatives are ''unacceptable as of January 1, 2021, except where allowed under a narrowed use limit.'' In the 2020 NPRM, EPA proposed to revise this listing of unacceptable substitutes for XPS to add an exception to the unacceptability of blends of HFC-134a, HFC-245fa, or HFC-365mfc for cases ''where blends are specifically listed as acceptable.'' 85 FR 35889. That change was proposed to allow for consistency between the proposed acceptable listings for these blends for XPS in the 2020 NPRM and the existing unacceptable listing for HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; and Formacel TI, Formacel B, and Formacel Z-6. EPA notes that if we finalize the proposed change of listing the three blends of HFC-134a as ''acceptable, subject to narrowed use limits,'' no change would be needed to appendix U for consistency, as the existing listing already includes the text ''except where allowed under a narrowed use limit.''

V. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0226. The approved Information Collection Request includes five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: Submission of a SNAP petition, filing a Toxic Substances Control Act/SNAP Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses. This rule contains no new requirements for reporting or recordkeeping.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The companies that may consider using the proposed blends, manufacturers of XPS products, are not small businesses.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, 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 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.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and will share information on this rulemaking through this and other fora.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The EPA has not conducted a separate analysis of risks to infants and children associated with this rule. Any risks to children are not different than the risks to the general population. This action's health and risk assessments are contained in the comparisons of toxicity for the various substitutes, as well as in the risk screens for the substitutes that are proposed to be listed. The risk screens are in the docket for this rulemaking.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to

[33] These blends range in composition from 10 percent HFO-1336mzz(Z) and 90 percent HFC-152a to 99 percent HFO-1336mzz(Z) and 1 percent HFC-152a.

[34] That is, alkanes with three to six carbons such as butane, n-pentane, isopentane, and cyclopentane.

[35] WMO, 2018.

[36] HFO-1336mzz(Z) and HFC-152a, have GWPs of about two (WMO, 2018) and 124 (IPCC, 2007), respectively. If these values are weighted by mass percentage, then the blends range in GWP from about three to about 110.

[37] WMO, 2018.

[38] WMO, 2018.

have a significant adverse effect on the supply, distribution, or use of energy. The blowing agents proposed in this action would enable the continued manufacture of insulation foam that maintain current levels of thermal efficiency.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

A regulatory action may involve potential environmental justice concerns if it could (1) create new disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through the action under development.

In EPA's 2009 and 2016 Endangerment Findings, the Administrator considered climate change risks to minority populations and low-income populations, finding that certain parts of the population may be especially vulnerable based on their characteristics or circumstances, including the poor, the elderly, the very young, those already in poor health, the disabled, those living alone, and/or indigenous populations dependent on one or limited resources due to factors including but not limited to geography, access, and mobility. More recent assessment reports by the U.S. Global Change Research Program (USGCRP), the Intergovernmental Panel on Climate Change (IPCC), and the National Research Council of the National Academies (NRC) demonstrate that the potential impacts of climate change raise environmental justice issues. These reports concluded that poorer communities can be especially vulnerable to climate change impacts because they tend to have more limited adaptive capacities and are more dependent on climate-sensitive resources such as local water and food supplies. In corollary, some communities of color—specifically, populations defined jointly by both ethnic/racial characteristics and geographic location—may be uniquely vulnerable to climate change health impacts in the United States. Native American tribal communities possess unique vulnerabilities to climate change, particularly those impacted by degradation of natural and cultural resources within established reservation boundaries and threats to traditional subsistence lifestyles. Tribal communities whose health, economic well-being, and cultural traditions that depend upon the natural environment will likely be affected by the degradation of ecosystem goods and services associated with climate change.

The EPA believes that this action does *not* have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (February 16, 1994; 59 FR 7629). In light of the controls on production and consumption of HFCs under the American Innovation and Manufacturing Act (December 27, 2020; Pub. L.116–260), if the proposed listings were finalized, they would not be expected to change the overall amount of HFCs manufactured or imported in the United States or to adversely impact the climate. Additionally, this limited action does not present a meaningful opportunity to address existing disproportionate impacts.

EPA's analysis indicates that other environmental impacts and human health impacts of the proposed substitutes are comparable to or less than those of other substitutes that are listed as acceptable for the same end-use. For EPA's analysis of the human health and environmental impacts of these substitutes, see the risk screens in the public docket for this rulemaking (ICF, 2020a; ICF, 2020b; ICF, 2020c). The limited period of time for the proposed listings in this supplemental proposal would further reduce any impacts compared to the proposed listings for XPS in the 2020 NPRM. Based on these considerations, EPA expects that, if this supplemental proposal becomes final as proposed, the effects on minority populations, low-income populations, and/or indigenous peoples would not be disproportionately high and adverse.

VI. References

Unless specified otherwise, all documents are available electronically through the Federal Docket Management System, Docket number EPA–HQ–OAR–2019–0698.

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ICF, 2020b. Risk Screen on Substitutes in Extruded Polystyrene Boardstock and Billet Foam; Substitute: Blends of 40 to 52 Percent HFC-134a with 40 to 60 Percent HFO-1234ze(E) and 10 to 20 Percent Each Water and CO_2 by Weight (Co-blowing Blends).

ICF, 2020c. Risk Screen on Substitutes in Extruded Polystyrene Boardstock and Billet Foam; Substitute: Blends with Maximum of 51 Percent HFC-134a, 17 to 41 Percent HFC-152a, up to 20 Percent CO_2 and One to 13 Percent Water (Blends for Foam Blowing).

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. In appendix W to subpart G of part 82:

■ a. Revise the heading for appendix W to subpart G of part 82.

■ b. Add a table titled ''Foam Blowing Agents—Substitutes Acceptable Subject to Narrowed Use Limits'' after the table titled ''Refrigerants—Substitutes Acceptable Subject to Use Conditions''.

The addition and revision read as follows:

Appendix W to Subpart G of Part 82—Substitutes Listed in the May 6, 2021 Final Rule and the [Date of publication of final rule in the Federal Register] Final Rule—Effective June 7, 2021 and [Date 30 days after date of publication of the final rule in the Federal Register]

* * * * *

FOAM BLOWING AGENTS—SUBSTITUTES ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Narrowed use limits	Further information
Extruded Polystyrene: Boardstock and Billet.	Blends of 40 to 52 percent HFC-134a by weight and the remainder HFO-1234ze(E).	Acceptable Subject to Narrowed Use Limits.	Acceptable from [insert date 30 days after date of publication of final rule] until January 1, 2023: only for use where reasonable efforts have been made to ascertain that other alternatives are not yet technically feasible for reasons of performance or safety. Users are required to document and retain the results of their technical investigation of alternatives for the purpose of demonstrating compliance. Information shall include descriptions of: • Process or product in which the substitute is needed; • Substitutes examined and rejected; • Reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards; and/or • Anticipated date other substitutes will be available and projected time for switching.	
Extruded Polystyrene: Boardstock and Billet.	Blends of 40 to 52 percent HFC-134a with 40 to 60 percent HFO-1234ze(E) and 10 to 20 percent each water and CO_2 by weight.	Acceptable Subject to Narrowed Use Limits.	Acceptable from [insert date 30 days after date of publication of final rule] until January 1, 2023: Only for use where reasonable efforts have been made to ascertain that other alternatives are not yet technically feasible for reasons of performance or safety. Users are required to document and retain the results of their technical investigation of alternatives for the purpose of demonstrating compliance. Information shall include descriptions of: • Process or product in which the substitute is needed; • Substitutes examined and rejected; • Reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards; and/or • Anticipated date other substitutes will be available and projected time for switching.	
Extruded Polystyrene: Boardstock and Billet.	Blends with maximum of 51 percent HFC-134a, 17 to 41 percent HFC-152a, up to 20 percent CO_2 and one to 13 percent water.	Acceptable Subject to Narrowed Use Limits.	Acceptable from [insert date 30 days after date of publication of final rule] until January 1, 2023 only for use where reasonable efforts have been made to ascertain that other alternatives are not yet technically feasible for reasons of performance or safety. Users are required to document and retain the results of their technical investigation of alternatives for the purpose of demonstrating compliance. Information shall include descriptions of: • Process or product in which the substitute is needed; • Substitutes examined and rejected;	

FOAM BLOWING AGENTS—SUBSTITUTES ACCEPTABLE SUBJECT TO NARROWED USE LIMITS—Continued

End-use	Substitute	Decision	Narrowed use limits	Further information
			• Reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards; and/or • Anticipated date other substitutes will be available and projected time for switching.	

[FR Doc. 2021–21031 Filed 10–5–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 679, and 680

[Docket No. 210929–0201]

RIN 0648–BK76

Fisheries of the Exclusive Economic Zone Off Alaska; Regulatory Amendment To Remove GOA Sablefish IFQ Pot Gear Tags and Notary Certification Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to modify recordkeeping and reporting requirements to remove pot gear tag requirements in the sablefish Individual Fishing Quota (IFQ) fishery in the Gulf of Alaska (GOA) and remove requirements to obtain and submit a notary certification on various programs' application forms. This action is intended to reduce administrative burden on the regulated fishing industry and the National Marine Fisheries Service (NMFS). This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Halibut Act, fishery management plans (FMPs), and other applicable laws.

DATES: Submit comments on or before November 5, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0084, by any 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–2021–0084 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, 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).

Electronic copies of the Regulatory Impact Review (referred to as the Analysis) and Categorical Exclusion prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.''

FOR FURTHER INFORMATION CONTACT: Alicia M Miller at 907–586–7228 or *Alicia.m.miller@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (U.S. EEZ) off Alaska under the FMP for Groundfish of the GOA (GOA FMP), and the FMP for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area (BSAI FMP). NMFS manages the king and Tanner crab fisheries in the U.S. EEZ of the FMP for BSAI King and Tanner Crabs (Crab FMP).

The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the BSAI FMP, the GOA FMP, and the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing and implementing the BSAI and GOA FMPs appear at 50 CFR parts 600 and 679. Regulations governing and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations at 50 CFR part 300, subpart E, established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k. Throughout the remainder of this preamble, Pacific halibut is referred to as halibut. The IPHC adopts annual management measures governing fishing for halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC regulations are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After acceptance by the Secretary of State and the Secretary, NMFS publishes the annual management measures in the **Federal Register** pursuant to 50 CFR 300.62. The Halibut Act, at section 773c(c), also authorizes the Council to develop halibut fishery regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations.

Background

In April 2021, the Council requested NMFS propose regulations to remove the requirement to obtain a notary certification on IFQ Program application

forms, as well as to remove the requirements for sablefish IFQ fishermen using longline pot gear in the GOA to annually register their vessel to participate in this fishery and obtain and mark their gear with pot gear tags. This proposed rule would modify recordkeeping and reporting requirements to remove pot gear tag requirements in the sablefish IFQ fishery in the GOA and remove requirements to obtain and submit a notary certification on application forms submitted under the halibut and sablefish IFQ Program, Charter Halibut Limited Access Program (CHLAP), Community Quota Entity (CQE) Program, License Limitation Program (LLP), and the Crab Rationalization (CR) Program. The primary purpose for requiring a notary certification was to prevent fraud and forgery by requiring the personal presence of the signer and satisfactorily identifying the signer. The Council determined, and NMFS agrees, that this requirement is unnecessary and administratively burdensome on the fleet and NMFS alike.

The following sections of this preamble describe (1) background information on the IFQ Program, CQE Program, CHLAP, LLP, and the CR Program, (2) the need for this proposed rule, (3) the impacts of this proposed rule, and (4) the specific provisions that would be implemented by this proposed rule.

Individual Fishing Quota Program

The commercial sablefish fisheries in the GOA and the BSAI are managed primarily under the IFQ Program. The Council and NMFS designed the IFQ Program to allocate harvest privileges among participants in the hook-and-line fishery to reduce fishing capacity that had led to an unsafe ''race for fish'' as vessels raced to harvest their allocation of the annual total allowable catch (TAC) of sablefish as quickly as possible before the TAC was reached. The IFQ Program design and subsequent amendments were intended to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. NMFS also allocates a small portion of the annual sablefish TAC to vessels using trawl gear. The trawl sablefish fishery is not managed under the IFQ Program, and this proposed rule does not modify regulations applicable to the trawl sablefish fishery.

The commercial halibut fisheries in the GOA and the BSAI are also managed under the IFQ Program. The halibut fisheries experienced overcapacity and short fishing seasons similar to the sablefish fisheries. In addition, many fishermen participate in both fisheries because the species overlap in some fishing areas and may be harvested simultaneously.

The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993). Under the IFQ Program, access to the non-trawl sablefish and halibut fisheries is limited to those persons holding quota shares. NMFS issued separate quota shares for sablefish and halibut to qualified applicants based on their historical participation during a set of qualifying years in the sablefish and halibut fisheries. A quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of either the TAC in the sablefish fishery or the annual commercial catch limit in the halibut fishery. In addition to being specific to sablefish or halibut, quota shares are designated for specific geographic harvest areas, a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category).

Quota share allocation is given effect on an annual basis through the issuance of an IFQ permit. An annual IFQ permit authorizes the permit holder to harvest a specified amount of an IFQ species in an IFQ regulatory area from a specific operation type and vessel category. IFQ is expressed in pounds and is based on the amount of quota share held in relation to the total quota share pool for each IFQ regulatory area with an assigned catch limit. Section 3.1 of the Analysis (see **ADDRESSES**) provides additional information on the IFQ Program.

NMFS authorized the use of longline pot gear in the sablefish IFQ fishery in the GOA under Amendment 101 to the GOA FMP (81 FR 95435, December 28, 2016). Under Amendment 101, NMFS also authorized the retention of halibut IFQ when using longline pot gear to harvest sablefish IFQ in the GOA. Under Amendment 101, NMFS implemented limits on the number of pots that could be used and required the use of pot gear tags. The pot gear tag requirements were intended to facilitate at-sea monitoring and enforcement of the pot limits. Under regulations implementing Amendment 101, a vessel operator using longline pot gear in the GOA sablefish IFQ fishery must annually request pot gear tags from NMFS by submitting a complete IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags form, available on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.* NMFS then issues the number of requested pot gear tags up to the pot limit authorized at § 679.42(l)(5)(ii) in a sablefish regulatory area.

Regulations require a notary certification for NMFS to approve the following transactions under the IFQ Program: (1) Transfer of QS; (2) Temporary Transfer of IFQ; (3) Temporary Military IFQ transfer; (4) QS transfer to a Recreational Quota Entity (RQE); (5) QS transfer to a CQE; (6) Application to establish an RQE; and (7) Application to establish a CQE. The following sections briefly describe those programs, which have not been discussed previously in this preamble.

Community Quota Entity Program

The Council developed the CQE Program to improve the ability for rural coastal communities to maintain long-term opportunities to access the halibut and sablefish resources. The Council recommended the CQE Program in the GOA as an amendment to the IFQ Program in 2002, and NMFS implemented the program in 2004 (69 FR 23681, April 30, 2004).

The CQE Program allows small, remote, coastal communities listed in Table 21 to Part 679 in the GOA to purchase and hold catcher vessel halibut QS in IPHC regulatory Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the GOA. Communities eligible to participate in the CQE Program in the GOA include those that meet criteria for geographic location, population size, and historic participation in the halibut and sablefish fisheries. Additional detail on the CQE Program is available in Section 3.2 of the Analysis (See **ADDRESSES**).

Participating communities are represented by a CQE, which is a NMFS-approved non-profit organization. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. To participate in this program, an eligible community must designate a CQE to represent it through the submission of an application to NMFS for a nonprofit corporation to be designated as a CQE. Regulations at 50 CFR 679.41(l) require a notary certification on this application form.

Charter Halibut Limited Access Program

The Council and NMFS developed specific management programs for the charter halibut fishery to achieve allocation and conservation objectives. These management programs maintain stability and economic viability in the charter fishery by (1) limiting the number of charter vessel operators, (2) allocating halibut to the charter fishery that varies with abundance, and (3)

establishing a process for determining harvest restrictions for charter vessel anglers to keep the charter halibut fishery harvest within its allocations.

The charter fisheries in IPHC regulatory Areas 2C and 3A are currently managed under the CHLAP and the Catch Sharing Plan (CSP). The CHLAP limits the number of operators in the charter fishery, while the CSP establishes annual allocations to the charter and commercial fisheries and describes a process for determining annual management measures to limit charter harvest to the allocations in each IPHC regulatory area.

The CHLAP established Federal charter halibut permits (CHPs) for operators in the charter halibut fisheries in Areas 2C and 3A (75 FR 554, January 5, 2010). Since 2011, all vessel operators in Areas 2C and 3A with charter anglers on board must have an original, valid CHP on board during every charter vessel fishing trip on which halibut are caught and retained. CHPs are endorsed for the applicable IFQ regulatory area and the number of charter anglers that may catch and retain halibut on a trip.

Several requirements must be met to receive a CHP. They included: (1) A timely application for a permit; (2) documentation of participation in the charter vessel fishery during the qualifying and recent participation periods by Alaska Department of Fish and Game (ADF&G) logbooks; and (3) ownership of a business that was licensed by ADF&G to conduct the guided sport fishing that was reported in the logbooks. Licensed business owners that qualified for CHPs included individuals, corporations, firms, and associations (50 CFR 300.61). NMFS issued both transferable and nontransferable CHPs, depending on specific qualifying criteria detailed in the final rule implementing the CHLAP (75 FR 554, January 5, 2010).

Effective December 20, 2019, implemented regulations also require CHPs to be registered annually with NMFS before they are used (84 FR 64023, November 20, 2019). The annual registration of CHPs is intended to improve the enforcement of CHP transfer limitations and ownership caps, as well as provide additional information to NMFS and the Council on any changes in CHP ownership, leasing, and participation. Regulations at 50 CFR 300.67(i)(4) require a notary certification on a CHP transfer application form.

License Limitation Program

In 1998, the Secretary implemented the LLP to place an upper limit on the number of vessels that could be deployed in the crab and groundfish (other than sablefish) fisheries off Alaska. The LLP was originally intended to address concerns that the harvesting fleet had expanded beyond the size necessary to harvest efficiently the optimum yield of the fisheries off Alaska. The LLP established several exemptions from the requirement that a vessel be named on an LLP license, including an exemption for small vessels. The LLP was established by Amendment 39 to the BSAI FMP, Amendment 41 to the GOA FMP, and Amendment 5 to the Crab FMP, which were implemented by NMFS on October 1, 1998 (63 FR 52642). Additional information about the LLP can be found in the preamble to the proposed rule for these amendments (62 FR 43866, August 15, 1997).

As of January 1, 2000, an LLP license is required for vessels participating in directed fishing for LLP groundfish species in the GOA or BSAI, fishing for commercial scallops in the GOA or BSAI, or fishing in any BSAI LLP crab fishery. A vessel must be named on an LLP license and that LLP license must be on board the vessel. The LLP is authorized in Federal regulations at 50 CFR 679.4(k), definitions relevant to the program are at 679.2, and prohibitions are at 679.7.

The LLP license requirement is in addition to all other permits or licenses required by Federal regulations. The LLP is a Federal program and LLP licenses are not required for participation in fisheries that occur in the waters of the State of Alaska.

Permanent LLP licenses are transferable, and the vessel named on the LLP license may also be changed. Transfer applications are available online and from the NMFS Restricted Access Management Program. To be effective, an application for such transfers must be submitted to and approved by NMFS. Additional information about the LLP Program and transfer limitations is included in Section 3.5 of the Analysis (See **ADDRESSES**).

Regulations at 50 CFR 679. 4(k)(7)(iii) require a notary certification on an application for the transfer of LLP licenses.

Crab Rationalization Program

The CR Program was implemented on April 1, 2005 (70 FR 10174, March 2, 2005). The CR Program established a limited access program for nine crab fisheries in the BSAI and assigned QS to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual TAC. NMFS also issues processor quota share (PQS) under the CR Program. Each year, PQS yields an exclusive privilege to process a portion of IFQ in each of the nine BSAI CR crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. Each year there is a one-to-one match between the total pounds of IFQ that must be delivered to a processor with IPQ with and the total pounds of IPQ issued in each CR crab fishery.

Administration of the CR Program requires the submission of information to NMFS for a variety of purposes, including annual formation of cooperatives and the transfer of QS, PQS, IFQ, and IPQ privileges. Regulations require a notary certification on five CR Program application forms: (1) Application for Transfer of Crab PQS; (2) Application for Transfer of Crab QS; (3) Application to Become an Eligible Crab Community Organization (ECCO); (4) Application for Transfer of Crab QS/IFQ to or from an ECCO; and (5) Application for CR Program Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer. Additionally, the BSAI CR Program QS Beneficiary Designation Form requires a notary certification, but this requirement is not explicitly stated in regulation.

Need for This Proposed Rule

The purpose of this proposed action is to remove recordkeeping and reporting requirements that are no longer necessary. This action is intended to reduce administrative burden on the regulated fishing industry and NMFS by making two types of revisions to Federal regulations. First, this proposed rule would remove regulations requiring the use of pot gear tags in the longline pot gear sablefish IFQ fishery in the GOA. Second, this proposed rule would remove notary certification requirements for several application forms submitted to NMFS.

Impacts of This Proposed Rule

Pot Gear Tags

This proposed rule would remove a requirement that all pots deployed in GOA sablefish areas have a pot gear tag that is (1) issued by NMFS and (2) assigned by NMFS to a vessel that is licensed by the State of Alaska. Regulations requiring a vessel owner to request and receive pot gear tags by submitting an application to NMFS would be removed. NMFS would no

longer administer issuance of pot gear tags to vessel owners. Vessel owners would no longer be required to submit an application to NMFS for the purpose of assigning pot gear tags to the gear used by that vessel, and vessel operators would no longer be required to track individual pot gear tags marked with a unique identifier that are assigned to their vessel.

Pot gear tags have proven to be an impractical and ineffective at-sea enforcement tool for the purpose of enforcing pot limits implemented under Amendment 101 to the GOA FMP. During an at-sea boarding, an enforcement officer would need to be able to visually inspect each pot being used by that vessel during a single boarding to ensure that every pot was marked with the appropriate tag, that the tags were all appropriately assigned to the vessel using them, and that the total number of pots did not exceed the area specific limit. Because an at-sea boarding typically occurs while a vessel is actively fishing, the total amount of gear being used by the vessel is typically not available to the boarding officer. At any given time, some gear may be on the deck of the vessel while other pots are located at the bottom of the ocean or stored on land. Other provisions implemented under GOA Amendment 101 including the daily fishing logbook (DFL), the prior notice of landing (PNOL), and from a Vessel Monitoring System unit onboard the vessel remain in effect and are sufficient for enforcement purposes. Section 4.3 of the Analysis (See **ADDRESSES**) provides additional information about the management and enforcement considerations of this proposed action.

Notary Certification

This proposed rule would remove requirements to obtain and submit a notary certification on NMFS application forms. All application forms submitted to NMFS would continue to include a certification attesting to agreement with a statement that the information submitted on the application form is true, correct, and complete. This certification is sufficient to deter fraud and forgery, and to adequately enforce fraud and forgery should it occur. In addition, NMFS has identified that the requirement for notary certification is not consistently applied on all applications forms used by NMFS, and fraud and forgery have not been identified as significant concerns. This proposed rule would remove a requirement that is not necessary to enforce or deter fraud and forgery and is consistent with other application forms that NMFS administers.

This proposed rule would modify regulations applicable to the halibut and sablefish IFQ Program, CHLAP, CQE Program, LLP, and the CR Program. The following application forms would be revised to remove the notary certification.

IFQ Program:

- Application for Eligibility to Receive QS/IFQ;
- Application for Transfer of QS;
- Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ) (this includes: Category A IFQ transfer, surviving beneficiary, Temporary military transfer, and IFQ transfer to CDQ groups during year of low halibut abundance);
- Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity (RQE); and
- Application for Transfer Of Quota Share To Or From A Recreational Quota Entity (RQE).

CQE Program:

- Application for a Non-profit Corporation to be Designated as a Community Quota Entity (CQE); and
- Application for Transfer of Quota Share to or From A Community Quota Entity (CQE).

CHLAP:

Application for Transfer Of Charter Halibut Permit (CHP).

LLP:

Application for Transfer License Limitation Program Groundfish/Crab License.

Crab:

- Application for Transfer of Crab Quota Share (QS);
- Application for Transfer of Crab Processor Quota Share (PQS);
- Application to Become An Eligible Crab Community Organization (ECCO);
- Application for Transfer of Crab QS/IFQ to or from an Eligible Crab Community Organization (ECCO); and
- BSAI Crab Rationalization Program Quota Share (QS) Beneficiary Designation Form.

Proposed Changes to Regulations

This proposed rule would revise regulations at 50 CFR part 300, 50 CFR part 679, and 50 CFR part 680 to (1) to remove pot gear tag requirements in the sablefish IFQ fishery in the GOA and (2) remove requirements to obtain and submit a notary certification on application forms. This section describes the proposed changes to current regulations.

Pot Gear Tags

This proposed rule would revise §§ 679.7(f)(18) and (19), and 679.42(l)(2) through (l)(5), to remove regulations governing the requirements to request and use pot gear tags when using longline pot gear in the GOA sablefish IFQ fishery.

Notary Certification

This proposed rule would revise §§ 300.67, 679.4, 679.41, and 680.41 to remove requirements to obtain and submit a notary certification on application forms submitted under the IFQ Program, CHLAP, CQE Program, LLP, and CR Program.

This proposed rule would revise § 300.67(i)(4) to remove the requirement to obtain a notary certification on an application to transfer a CHP.

This proposed rule would revise § 679.4(k)(7)(iii) to remove the requirement to obtain a notary certification on an application for transfer of a groundfish or crab LLP.

This proposed rule would revise §§ 679.41(c)(3), 679.41(l)(3)(iii)(D), 679.41(m)(3)(v), and 679.41(n)(2)(iii)(D) to remove requirements to obtain a notary certification on the following IFQ Program and CQE Program Application forms:

- Application for Transfer of QS;
- Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ) (This includes: Category A IFQ transfer, surviving beneficiary, Temporary military transfer, and IFQ transfer to CDQ groups during year of low halibut abundance.);
- Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity (RQE);
- Application for Transfer Of Quota Share To Or From A Recreational Quota Entity (RQE);
- Application for a Non-profit Corporation to be Designated as a Community Quota Entity (CQE); and
- Application for Transfer of Quota Share to or From A Community Quota Entity (CQE).

The application for eligibility to receive QS or IFQ requires an applicant to obtain and submit a notary certification. This requirement is not included in regulations and will be removed from the form.

This proposed rule would revise §§ 680.41(c)(2)(ii)(F)(2), 680.41(i)(2), 680.41(j)(2)(i)(C), and 680.41(k)(3)(ix) to remove requirements to obtain a notary certification on the following CR Program application forms:

- Application for Transfer of Crab Quota Share (QS);
- Application for Transfer of Crab Processor Quota Share (PQS);
- Application to Become An Eligible Crab Community Organization (ECCO);

- Application for Transfer of Crab QS/IFQ to or from an Eligible Crab Community Organization (ECCO); and
- Application for CR Program Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer.

The BSAI CR Program QS beneficiary designation form requires an applicant to obtain and submit a notary certification. This requirement is not included in regulations and will be removed from the form.

This proposed rule also corrects a typographical error in § 680.41(k)(3)(ix)(B)(*1*) to remove the word ''transferor'' and replace it with ''transferee'' consistent with the preceding paragraph heading.

Classification

NMFS is issuing this proposed rule pursuant to section 305(d) of the Magnuson-Stevens Act. Pursuant to MSA section 305(d), this proposed action is necessary to carry out the BSAI FMP, the GOA FMP, and the Crab FMP, because the aforementioned recordkeeping and reporting requirements are no longer necessary to administer the fishery management programs implemented under these FMPs. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, the GOA FMP, the Crab FMP, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the regional council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters, as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Certification Under the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This action would modify recordkeeping and reporting requirements to remove pot gear tag requirements in the sablefish IFQ fishery in the GOA. In addition, this action would remove requirements to obtain and submit a notary certification on application forms and, therein, would modify regulations applicable to the halibut and sablefish IFQ Program, CHLAP, CQE Program, LLP, and the CR Program. Therein, this action would directly regulate vessel operators using longline pot gear to harvest sablefish IFQ in the GOA and other IFQ program participants, CHP holders under the CHLAP, CQE Program participants, LLP license holders, and participants in the CR Program.

This action is expected to reduce costs to IFQ program participants by removing the requirement and associated administrative costs of the pot gear tag program. This action would also reduce the time burden and cost incurred by fishery participants to obtain a notary certification on affected application forms. This action would benefit all affected vessels and program participants by reducing the cost of complying with Federal regulations implementing the affected fishery management programs.

For these reasons, this action is not expected to have an adverse economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Information Collection Requirements

This proposed rule contains information collection requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under the following control numbers: 0648–0272 (Alaska Pacific Halibut & Sablefish Fisheries: Individual Fishing Quota (IFQ)); 0648–0334 (Alaska License Limitation Program for Groundfish, Crab, and Scallops); 0648–0353 (Alaska Region Gear Identification Requirements); 0648–0514 (Alaska Region Crab Permits); 0648–0575 (Alaska Pacific Halibut Fisheries: Charter); and 0648–0665 (Alaska Community Quota Entity (CQE) Program).

OMB Control Number 0648–0272

The notary certification is removed from five forms approved under this control number. Subject to public comment, no changes are made to the estimated reporting burdens for these applications as the estimates allow for differences in the time needed to complete and submit the applications. Public reporting burden per individual response is estimated to average 200 hours for the Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity (RQE); and 2 hours each for the Application for Eligibility to Receive QS/IFQ, the Application for Transfer of QS, the Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ), and the Application For Transfer Of Quota Share To Or From A Recreational Quota Entity (RQE). Removing the notary certification will decrease the cost burden of completing these forms.

OMB Control Number 0648–0334

The notary certification is removed from the Application for Transfer License Limitation Program Groundfish/Crab License. Subject to public comment, no changes are made to the estimated reporting burden for this application as the estimate allows for differences in the time needed to complete and submit the application. Public reporting burden per individual response is estimated to average 1 hour. Removing the notary certification will decrease the cost burden of completing this form.

OMB Control Number 0648–0514

The notary certification is removed from five forms approved under this control number. Subject to public comment, no changes are made to the estimated reporting burdens for these applications as the estimates allow for differences in the time needed to complete and submit the applications. Public reporting burden per individual response is estimated to average 2.5 hours for the Application to Become An Eligible Crab Community Organization (ECCO); 2 hours each for the Application for Transfer of Crab Quota Share (QS), Application for Transfer of Crab Processor Quota Share (PQS), Application for Transfer of Crab QS/IFQ to or from an Eligible Crab Community Organization (ECCO); and 30 minutes for the BSAI Crab Rationalization Program Quota Share (QS) Beneficiary Designation Form. Removing the notary

certification will decrease the cost burden of completing these forms.

OMB Control Number 0648–0575

The notary certification is removed from the Application for Transfer Of Charter Halibut Permit (CHP). Subject to public comment, no changes are made to the estimated reporting burden for this application as the estimate allows for differences in the time needed to complete and submit the application. Public reporting burden per individual response is estimated to average 2 hours. Removing the notary certification will decrease the cost burden of completing this form.

OMB Control Number 0648–0353

This collection is revised to remove two forms associated with pot gear tags: (1) IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags; and (2) IFQ Sablefish Request for Replacement of Longline Pot Gear Tags. These forms are no longer necessary because vessel owners participating in the longline pot gear sablefish IFQ fishery in the GOA would no longer be required to register their vessel or use pot gear tags. Removing these requirements decreases the time burden and cost to participants in this fishery.

OMB Control Number 0648–0665

This rule proposes to revise and extend by three years OMB Control Number 0648–0665. This collection contains the application used by a non-profit entity to be designated as a CQE and contains the applications and reports submitted by CQEs to apply for a CHP permit or LLP license; transfer IFQ, quota share, or guided angler fish; and report and manage their fishing activities. This collection is necessary for NMFS to manage the CQE Program.

Due to this rule, this collection is revised to remove the notary certification from the Application for a Non-profit Corporation to be Designated as a Community Quota Entity (CQE) and the Application for Transfer of Quota Share to or From A Community Quota Entity (CQE). Subject to public comment, no changes are made to the estimated reporting burdens for these applications as the estimates allow for differences in the time needed to complete and submit the applications. Removing the notary certification will decrease the cost burden of completing these forms.

The estimated number of respondents for this collection is 94; the estimated total annual burden hours are 1,620 hours; and the estimated total annual cost to the public for recordkeeping and reporting costs is $895.

Public reporting burden per individual response is estimated to average 200 hours for the Application for Nonprofit Corporation to be Designated as a CQE; 40 hours for the CQE Annual Report; 20 hours for the Application for a CQE to Receive a Non-trawl Groundfish LLP License; 2 hours each for the Application for Transfer of Quota Share to or from a Community Quota Entity, the Application for a CQE to Transfer IFQ to an Eligible Community Resident or Non-resident, and the Application for Transfer (Lease) Between IFQ and Guided Angler Fish by a Community Quota Entity (CQE); and 1 hour each for the CQE License Limitation Program Authorization letter and the Application for Community Charter Halibut Permit.

Public Comment

Public comment is sought regarding whether these proposed information collection requirements are necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**), or to the Office of Information and Regulatory Affairs (OIRA) by visiting *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *https://www.reginfo.gov/public/do/PRASearch.*

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 30, 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 parts 300, 679, and 680 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.67, remove the phrase ''notarized and'' from the first sentence in paragraph (i)(4).

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 4. In § 679.4, remove the phrase ''notarized and'' from the first sentence in paragraph (k)(7)(iii).

■ 5. In § 679.7, remove and reserve paragraphs (f)(18)(ii), and (f)(19)

■ 6. In § 679.41, remove the word ''notarized'' from paragraph (c)(3), remove paragraph (m)(3)(vi), and revise paragraphs (l)(3)(iii)(D), and (n)(2)(iii)(D) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(l) * * *

(3) * * *

(iii) * * *

(D) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, resumes of management personnel, name of community or communities represented by the CQE, name of contact for the governing body of each community

represented, date, name and signature of applicant.

* * * * *

(n) * * *

(2) * * *

(iii) * * *

(D) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, resumes of management personnel, name and signature of applicant; and

* * * * *

■ 7. In § 679.42, remove and reserve paragraphs (l)(2)(i), (ii), (l)(3), and (l)(4), and revise paragraph (l)(5)(iv) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(l) * * *

(5) * * *

(iv) *Longline pot gear used on multiple vessels.* Longline pot gear assigned to one vessel and deployed to fish IFQ sablefish in the GOA must be removed from the fishing grounds, and returned to port before being deployed by another vessel to fish IFQ sablefish in the GOA.

* * * * *

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 8. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 9. In § 680.41, remove and reserve paragraphs (c)(2)(ii)(F)(*2*), (j)(2)(i)(C)(*2*), (k)(3)(ix)(A)(*2*), (B)(*2*), and (C)(*2*), remove the phrase ''original notarized'' from paragraphs (i)(2), remove the word ''notarized'' from paragraph (j)(2)(i)(C), remove the word ''transferor'' and replace it with ''transferee'' in paragraph (k)(3)(ix)(B)(*1*), and revise paragraph (k)(3)(ix) heading to read as follows:

§ 680.41 Transfer of QS, PQS, IFQ and IPQ.

* * * * *

(k) * * *

(3) * * *

(ix) *Certification information*—

* * * * *

[FR Doc. 2021–21721 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 191
Wednesday, October 6, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0063]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Citrus Canker, Citrus Greening, and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations to prevent the spread of citrus canker, citrus greening, and citrus greening's vector, the Asian citrus psyllid, to noninfested areas of United States.

DATES: We will consider all comments that we receive on or before December 6, 2021.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0063 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0063, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the interstate movement of regulated articles to prevent the spread of citrus canker, citrus greening, and citrus greening's vector, the Asian citrus psyllid, contact Ms. Glorimar Marrero, Assistant National Policy Manager for Citrus Health Response Program, EDP, PPQ, APHIS, 4700 River Road, Unit 52, Riverdale, MD 20737; (240) 577–4633. For more information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Citrus Canker, Citrus Greening, and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations.

OMB Control Number: 0579–0363.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of the U.S. Department of Agriculture (USDA), either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and diseases that are new to or not widely distributed within the United States. Under the Act, the Secretary may also issue regulations requiring plants and plant products moved in interstate commerce to be subject to remedial measures determined necessary to prevent the spread of the pest or disease, or requiring the objects to be accompanied by a permit issued by the Secretary prior to movement. The USDA's Animal and Plant Health Inspection Service (APHIS) administers the regulations to implement the PPA.

Citrus canker is a plant disease that is caused by the bacterium *Xanthomonas citri* subsp. *citri* that affects plants and plant parts of citrus and citrus relatives of the Rutaceae family. Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants and cause infected fruit to drop from trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas. Citrus greening, also known as Huanglongbing, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease that attacks the vascular system of host plants. This bacterial pathogen can be transmitted by grafting and, under laboratory conditions, by parasitic plants. The pathogen can also be transmitted by two insect vectors, one of which is *Diaphorina citri* Kuwayama, the Asian citrus psyllid (ACP). ACP can cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. High populations feeding on a citrus shoot can kill the growing tip.

Under the regulations in ''Subpart M–Citrus Canker'' (7 CFR 301.75–1 through 301.75–17) and ''Subpart N–Citrus Greening and Asian Citrus Psyllid'' (7 CFR 301.76 through 301.76–11), APHIS restricts the interstate movement of regulated articles from quarantined areas to control the artificial spread of citrus canker and citrus greening and its vector, ACP, to noninfested areas of the United States. The regulations contain requirements that involve information collection activities, including initiating or reviewing a compliance agreement; application for a limited permit or Federal certificate; labeling; recordkeeping; appealing cancellation of a certificate, permit, and compliance agreement; and responding to an emergency action notification.

The information collection requirements listed above are currently approved by the Office of Management and Budget (OMB) for the Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations (OMB control number 0579–0363), and Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit From Quarantined Areas (OMB control number 0579–0317). After OMB approves this combined information collection package (OMB control

number 0579–0363), APHIS will retire OMB control number 0579–0317.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.04 hours per response.

Respondents: Commercial nurseries/operations in U.S. States or U.S. Territories quarantined for citrus canker, citrus greening, or ACP.

Estimated annual number of respondents: 1,395.

Estimated annual number of responses per respondent: 7,428.

Estimated annual number of responses: 10,361,832.

Estimated total annual burden on respondents: 366,719 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of September 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–21794 Filed 10–5–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Wallowa-Whitman National Forest is proposing to implement new fees at twenty-two sites listed in the **SUPPLEMENTARY INFORMATION.** The Federal Recreation Lands Enhancement Act directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. An analysis of the nearby private and public offerings with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: The new fees will be implemented no earlier than six months following publication of this notice in the **Federal Register**.

ADDRESSES: Wallowa-Whitman National Forest, Attention: Recreation Program Manager, 1550 Dewey Ave., Suite A, Baker City, OR 97814.

FOR FURTHER INFORMATION CONTACT: Teresa Fraser, Recreation Fee Coordinator, 541–805–2769 or *sm.fs.wwnf-webmail@usda.gov.*

SUPPLEMENTARY INFORMATION: This fee proposal was vetted through the Forest Service public involvement process which included announcement of the proposal in local and regional media outlets, on the Forest internet and social media sites, and briefing Federal and local elected officials. The results of these efforts were presented to the local Resource Advisory Committee (RAC) for evaluation and recommendation to implement the new recreation fees which were approved.

Reasonable fees, paid by users of these sites, will help ensure the Forest can continue maintaining and improving recreation sites like this for future generations. Fees at the Moss Springs Guard Station will be $60/night, and fees will be $80/night at the Lostine Guard Station. The following day use site fees will be $5/day and will honor the full suite of America the Beautiful Interagency passes, as well as the Northwest Forest pass: Elkhorn Crest Trailhead, Hat Point Trailhead, Heavens Gate Trailhead, Upper Snake River Trailhead, and Windy Saddle Trailhead. Fees at the following campgrounds will be $10/night: Black Lake Campground, Boulder Park Campground, Boundary Campground, Canyon Forest Camp, Coyote Campground, Catherine Creek Campground, Saddle Creek Campground, Seven Devils Campground, Spring Creek Campground, Twin Lakes Campground, Two Color Campground, Umapine Campground, and Windy Saddle Horse Camp. Mcbride and Dougherty Campground fees will be $15/.

People wanting to reserve these campgrounds and cabins will be able to do so through *Recreation.gov*, at *www.recreation.gov* or by calling 1–877–444–6777.

Dated: October 1, 2021.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–21818 Filed 10–5–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee site.

SUMMARY: The White River and Grand Mesa Uncompahgre Gunnison National Forests, located in central Colorado, are proposing to charge a new special recreation overnight permit fee for areas located in the Maroon Bells-Snowmass Wilderness. An analysis of other opportunities shows the proposed fees as described below under **SUPPLEMENTARY INFORMATION** are reasonable.

DATES: If approved, the new fee would be implemented no earlier than six months following publication of this notice in the **Federal Register**.

ADDRESSES: White River National Forest, ATTN: Recreation Fees, P.O. Box 309, Carbondale, CO 81623.

FOR FURTHER INFORMATION CONTACT: Kevin Warner, District Ranger, 970–404–3157. Information about proposed fee changes can also be found on the White River National Forest's website: *https://www.fs.usda.gov/whiteriver.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The fee is based on the level of amenities and services provided, the cost of operations and maintenance, and the market assessment of similar types of opportunities. A new special

recreation fee of $12 per night per person is proposed for overnight permits for certain areas located in the Maroon Bells-Snowmass Wilderness during peak permit season. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area. Scenic, high alpine passes connect 173 miles of Forest System trails featuring rich wildlife and botanic biodiversity, natural hot springs, and breathtaking fall colors. These characteristics make Maroon Bells-Snowmass Wilderness a unique wilderness recreation destination. The proposed fee would help cover the costs of specialized services including managing the permit system's sustainable distribution of visitors, site restoration, increased Forest Service ranger presence, trash and human waste removal, increased local and regional outreach, and improvements to trail access, trailhead signage. and information kiosks.

These new fees will be reviewed and approved by a Forest Service Regional Recreation Fee Board and the Forest Service Regional Forester prior to a final decision and implementation.

People wanting to reserve these permits will be able do so through Recreation.gov, at *www.recreation.gov* or by calling 1–877–444–6777.

Dated: October 1, 2021.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–21819 Filed 10–5–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/8/2021 through 9/23/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
All Things Elderberry, LLC	38 Crossroads Plaza, O'Fallon, MO 63368.	9/13/2021	The firm manufactures medicinal products made of elderberries.
Dimensional Innovations, Inc	3421 Merriam Lane, Overland Park, KS 66203.	9/16/2021	The firm manufactures signs and displays made of wood.
Alupress, LLC	114 Hunter Industrial Park Road, Laurens, SC 29360.	9/22/2021	The firm manufactures miscellaneous metal parts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2021–21785 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Property Management Requirements

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 6, 2021.

ADDRESSES: Interested persons are invited to submit written comments by mail to Sydney Milner, Program Analyst, Performance, Research and National Technical Assistance Division, Economic Development Administration, U.S. Department of Commerce, via

email at *smilner@eda.gov.* You may also submit comments to *PRAcomments@doc.gov.* Please reference OMB Control Number 0610–0103 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Sydney Milner, Program Analyst, Performance, Research and National Technical Assistance Division, Economic Development Administration, U.S. Department of Commerce, via email at *smilner@eda.gov* or via phone at (202) 365–4040.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be locally-driven, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *www.eda.gov.*

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. First, this collection of information allows EDA to determine whether an incidental use of property acquired or improved with EDA investment assistance is appropriate. Pursuant to 13 CFR 314.3(g), an incidental use of property: (1) Does not interfere with the scope of the project or the economic purpose for which the investment was made; (2) provided that the recipient is in compliance with applicable law and the terms and conditions of the investment assistance, and (3) the incidental use of the property will not violate the terms and conditions of the investment assistance or otherwise adversely affect the economic useful life of the property. A recipient must request in writing EDA's approval to undertake an incidental use of property acquired or improved with EDA's investment assistance pursuant to.

Second, this collection of information allows EDA to determine whether to release its real property or tangible personal property interests. If a recipient wishes for EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA. Pursuant to 13 CFR 314.10(c), the recipient must disclose to EDA the intended future use of the property for which the release is requested.

This information collection is scheduled to expire on November 30, 2021. EDA is not proposing any changes to the current information collection request.

II. Method of Collection

Property management requests are collected primarily through electronic submissions but may also be collected through paper submission.

III. Data

OMB Control Number: 0610–0103.

Form Number(s): None.

Type of Review: Regular submission; Extension of a currently approved collection.

Affected Public: Current recipients of EDA awards, including: (1) Cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities; (2) states; (3) institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes.

Estimated Number of Respondents: 150 (54 incidental use requests and 96 requests to release EDA's property interest each year).

Estimated Time per Response: Each request takes an estimated 45 minutes initially, with an estimated two hours to provide additional documentation or respond to follow-up questions, if necessary.

Estimated Total Annual Burden Hours: 412.50.

Type of request	Number of requests (estimated)	Hours per request (estimated)	Total estimated burden hours
Incidental use request	54	2.75	148.5
Release request	96	2.75	264
Total	.....	.....	412.5

Estimated Total Annual Cost to Public: $ 24,003. (cost assumes application of U.S. Bureau of Labor Statistics first quarter 2021 mean hourly employer costs for employee compensation for professional and related occupations of $58.19).

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request

to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–21776 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Amend an Investment Award and Project Service Maps

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 6, 2021.

ADDRESSES: Interested persons are invited to submit written comments by mail to Sydney Milner, Program Analyst, Performance, Research and National Technical Assistance Division, Economic Development Administration, U.S. Department of Commerce, via email at *smilner@eda.gov* or *PRAcomments@doc.gov.* You may also submit comments to *PRAcomments@doc.gov.* Please reference OMB Control Number 0610–0102 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Sydney Milner, Program Analyst, Performance, Research and National Technical Assistance Division, Economic Development Administration, U.S. Department of Commerce, via email at *smilner@eda.gov* or via phone at (202) 365–4040.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be locally-driven, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 et seq) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *www.eda.gov.*

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applicants for, and recipients of, EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for an extension of this information collection where a recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award (see 13 CFR 302.7(a)). Additionally, EDA *may* require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being assisted (see 13 CFR 302.16(c)).

II. Method of Collection

Amendments and project service maps are collected via both paper or electronic submissions, including email. A recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award (see 13 CFR 302.7(a)). EDA *may* require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being assisted (see CFR 302.16(c)). EDA is not proposing any changes to the current information collection request.

III. Data

OMB Control Number: 0610–0102.

Form Number(s): None.

Type of Review: Regular submission; Revision of a currently approved collection.

Affected Public: Current recipients of EDA awards, including: (1) Cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; (6) Indian Tribes; and (7) (for training, research, and technical assistance awards only) individuals and for-profit businesses.

Estimated Number of Respondents: 632 (600 requests for amendments to construction awards, 30 requests for amendments to non-construction awards, 2 project service maps).

Estimated Time per Response: 2 hours for an amendment to a construction award, 1 hour for an amendment to a non-construction award, 6 hours for a project service map.

Estimated Total Annual Burden Hours: 1,242 hours.

Type of request	Number of requests	Estimated hours per request	Estimated burden hours
Requests for amendments to construction awards	600	hours/request	1,200

Type of request	Number of requests	Estimated hours per request	Estimated burden hours
Requests for amendment to non-construction awards	30	1 hour/request	30
Project service maps	2	6 hours/map	12
Total			1,242

Estimated Total Annual Cost to Public: $72,272 (cost assumes application of U.S. Bureau of Labor Statistics first quarter 2021 mean hourly employer costs for employee compensation for professional and related occupations of $58.19).

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–21777 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Internal Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In Notice document 2021–19190, appearing on pages 50034–50047, in the issue of Tuesday, September 7, 2021, make the following correction:

On page 50043, the text for footnotes 5 and 6 was omitted and should read as set forth below:

[5] On 07/06/2021, Commerce published a correction notice to the opportunity to request an administrative review for chloropicrin from the People's Republic of China for the period 03/01/2020 through 09/21/2020 (A–570–002). See 86 FR 35474. In that notice, Commerce notified parties that they may request an administrative review not later than 30 days after the date of publication of this correction notice. Commerce did not receive any requests for an administrative review.

[6] This company is also known as Jindal Poly Films Limited of India, Jindal Films India Limited; and Jindal Poly Films Ltd. (India).

[FR Doc. C1–2021–19190 Filed 10–5–21; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR) January 1, 2019 through December 31, 2019, while other producers/exporters (*i.e.,* Hyundai Steel Co., Ltd., also referred to as Hyundai Steel Company (Hyundai Steel) and POSCO) received *de minimis* net countervailable subsidies during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Moses Song or Natasia Harrison, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7885 and (202) 482–1240, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2020, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order on cold-rolled steel from Korea.[1] On December 17, 2020, Commerce selected Hyundai Steel and POSCO as mandatory respondents in this administrative review.[2] On May 18, 2021, Commerce extended the deadline for the preliminary results of this review.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included at Appendix I to this notice. The Preliminary

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68840, 68846–68847 (October 30, 2020).

[2] *See* Memorandum, ''Countervailing Duty Administrative Review of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Examination,'' dated December 17, 2020. The petitioners requested a review of ''Hyundai Steel Co., Ltd.,'' while Hyundai Steel requested a review of ''Hyundai Steel Company.'' We selected Hyundai Steel Co., Ltd., also referred to as Hyundai Steel Company as a mandatory respondent, based on the entry volume of exports of subject merchandise during the POR. We combined the entry quantities of Hyundai Steel Co., Ltd., based on the company specific case number which appears in the CBP data.

[3] *See* Memorandum, ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for the Preliminary Results of the 2019 Countervailing Duty Administrative Review,'' dated May 18, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2019: Certain Cold-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Order

The merchandise covered by the order is certain cold-rolled steel. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not directly address the CVD rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight-averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[6] In this review, we preliminarily calculated *de minimis* subsidy rates for each of the mandatory respondents (*i.e.,* Hyundai Steel and POSCO) during the POR. In CVD proceedings where the number of respondents being individually examined has been limited, Commerce has determined that a ''reasonable method'' to use to determine the rate applicable to companies that were not individually examined when all the rates of selected mandatory respondents are zero or *de minimis,* is to assign to the non-selected respondents the average of the most recently determined rates for the mandatory respondents (*i.e.,* Hyundai Steel and POSCO) that are not zero, *de minimis,* or based entirely on facts available.[7] However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than these previous rates, Commerce has found it appropriate to apply that calculated rate to that non-selected respondent, even when that rate is zero or *de minimis.*[8]

In recent administrative reviews of this order, we calculated net subsidy rates of 0.51 percent *ad valorem* for Hyundai Steel and 0.59 percent *ad valorem* for POSCO.[9] Therefore, for these preliminary results, and consistent with Commerce's practice described above, we are assigning the rate of 0.55 percent *ad valorem, i.e.,* the simple average rate of Hyundai Steel's 0.51 percent and POSCO's 0.59 percent above-*ad valorem,* to non-selected companies for which an individual rate was not calculated.[10] In addition, in the most recently completed administrative review (*i.e., CRS Third Admin Review Final Results*), we calculated a rate of 9.18 percent *ad valorem* for Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd.[11] Accordingly, for these preliminary results, consistent with Commerce's practice described above, we are assigning the rate of 9.18 percent *ad valorem* to Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd., *i.e.,* the sole company for which an individual rate was calculated in a prior review but which was not selected for review in the instant review, based on the company's rate calculated in the prior review (*i.e., CRS Third Admin Review Final Results*).

Preliminary Results of the Review

As a result of this review, we preliminarily determine the net countervailable subsidy rates to be:

Producer/exporter	Subsidy rate *ad valorem* (percent)
Hyundai Steel Co., Ltd	*0.46
POSCO[12]	*0.32
Non-Selected Companies Under Review[13]	0.55
Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd.[14]	9.18

*(*de minimis*)

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, upon issuance of the final results,

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[7] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part,* 79 FR 51140, 51141 (August 27, 2014); and *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012,* 79 FR 46770 (August 11, 2014), and accompanying IDM at ''Non-Selected Rate''; and *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2017,* 85 FR 3030 (January 17, 2020), and accompanying PDM at ''Non-Selected Rate,'' unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017,* 85 FR 42353 (July 14, 2020), and accompanying IDM at ''Non-Selected Rate.''

[8] *Id.*

[9] *See Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018,* 86 FR 7063 (January 26, 2021); and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2018,* 86 FR 40465 (July 28, 2021) (*CRS Third Admin Review Final Results*); *see also Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2017,* 84 FR 60377 (November 8, 2019); and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017,* 85 FR 38361 (June 26, 2020) (*CRS Second Admin Review Final Results*) (collectively, *CRS Second Admin Review*).

[10] The rate of 0.55 percent *ad valorem* is the average of Hyundai Steel's and POSCO's most recently determined individual rates that are not zero, *de minimis,* or based entirely on facts available. *See CRS Third Admin Review Final Results,* 86 FR at 40466; and *CRS Second Admin Review Final Results,* 85 FR at 38361.

[11] *See CRS Third Admin Review Final Results,* 86 FR at 40466.

[12] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical; POSCO M-Tech; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; and POSCO Terminal. The subsidy rate applies to all cross-owned companies.

[13] *See* Appendix II.

Continued

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. If the assessment rate calculated in the final results in zero or *de minimis,* we will instruct CBP to liquidate all appropriate entries without regard to countervailing duties. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above, except, where the rate calculated in the final results is *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to the parties in this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[15] Case briefs, or other written comments, may be submitted to the Assistant Secretary for Enforcement and Compliance at a date to be determined. Rebuttal comments (rebuttal briefs), limited to issues raised in case briefs, may be filed within seven days [16] after the time limit for filing case briefs. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[17] All briefs must be filed electronically using ACCESS. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[18]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[19] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be determined.[20]

Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), unless this deadline is extended.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: September 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the *Order*
V. Rate for Non-Examined Companies
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Recommendation

Appendix II—List of Non-Selected Companies

1. AJU Steel Co., Ltd.
2. Amerisource Korea
3. Atlas Shipping Cp. Ltd.
4. BC Trade
5. Busung Steel Co., Ltd.
6. Cenit Co., Ltd.
7. Daewoo Logistics Corp.
8. Dai Yang Metal Co., Ltd.
9. DK GNS Co., Ltd
10. Dongbu Incheon Steel Co., Ltd.[21]
11. Dongbu Steel Co., Ltd.[22]
12. KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.)
13. Dongbu USA
14. Dong Jin Machinery
15. Dongkuk Industries Co., Ltd.
16. Dongkuk Steel Mill Co., Ltd.
17. Eunsan Shipping and Air Cargo Co., Ltd.
18. Euro Line Global Co., Ltd.
19. GS Global Corp.
20. Hanawell Co., Ltd.
21. Hankum Co., Ltd.
22. Hyosung TNC Corp.
23. Hyuk San Profile Co., Ltd.
24. Hyundai Group
25. Iljin NTS Co., Ltd.
26. Iljin Steel Corp.
27. Jeen Pung Industrial Co., Ltd.
28. JT Solution
29. Kolon Global Corporation
30. Nauri Logistics Co., Ltd.
31. Okaya (Korea) Co., Ltd.
32. PL Special Steel Co., Ltd.
33. POSCO C&C Co., Ltd.
34. POSCO Daewoo Corp.
35. POSCO International Corp.
36. Samsung C&T Corp.
37. Samsung STS Co., Ltd.
38. SeAH Steel Corp.
39. SM Automotive Ltd.
40. SK Networks Co., Ltd.
41. Taihan Electric Wire Co., Ltd.
42. TGS Pipe Co., Ltd.
43. TI Automotive Ltd.
44. Xeno Energy
45. Young Steel Co., Ltd.

[FR Doc. 2021–21851 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–DS–P

[14] As described above, while Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd. are non-selected respondents, because each received a calculated rate in a prior review (*i.e., CRS Third Admin Review Final Results*), Commerce has found it appropriate to apply that calculated rate to that to Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd. in this review.

[15] *See* 19 CFR 351.224(b).

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[17] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[18] *See Temporary Rule.*

[19] *See* 19 CFR 351.310(c).

[20] *See* 19 CFR 351.310(d).

[21] As described above, while Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd. are non-selected respondents, because each received a calculated rate in a prior review (*i.e., CRS Third Admin Review Final Results*), Commerce has found it appropriate to apply that calculated rate to that to Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd.

[22] *See* footnote 21.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–088]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the exporters under review sold certain steel racks and parts thereof (steel racks) from the People's Republic of China (China) in the United States at prices below normal value (NV) during the period of review (POR) March 4, 2019, through August 31, 2020. We invite interested parties to comment on these preliminary results of review.

DATES: Applicable October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill or Elizabeth Bremer, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3518 and (202) 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On September 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on steel racks from China.[1] After receiving review requests, Commerce initiated this review.[2] On May 14, 2021, Commerce extended the deadline for the preliminary results of this review by a total of 120 days, to September 30, 2021.[3] For additional background information, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order [5]

The merchandise covered by the *Order* is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (*e.g.,* uprights, posts, or columns), horizontal or diagonal components (*e.g.,* arms or beams), braces, frames, locking devices (*e.g.,* end plates and beam connectors), and accessories (including, but not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, row spacers, and wall ties).

Merchandise covered by the *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings 7326.90.8688, 9403.20.0081, and 9403.90.8041. Subject merchandise may also enter under subheadings 7308.90.3000, 7308.90.6000, 7308.90.9590, and 9403.20.0090. The HTSUS subheadings are provided for convenience and U.S. customs purposes only. The written description of the scope is dispositive.

A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On November 20 and 30, 2020, Hebei Minmetals Co., Ltd. (Hebei Minmetals) and Guangdong Wireking Housewares and Hardware Co., Ltd., (Guangdong Wireking) timely filed certifications that they did not export or sell subject merchandise to the United States during the POR and that there were no entries of their subject merchandise into the United States during the POR. Based on an analysis of information from U.S. Customs and Border Protection (CBP), and Hebei Minmetals and Guangdong Wireking's no shipment certifications, we have preliminarily determined that Hebei Minmetals and Guangdong Wireking did not export or sell subject merchandise to, nor was their subject merchandise entered into, the United States during the POR.[6]

Consistent with Commerce's practice, we are not rescinding this administrative review of Hebei Minmetals and Guangdong Wireking, but intend to complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices for the mandatory respondents Nanjing Dongsheng Shelf Manufacturing Co., Ltd. (Dongsheng) and Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd (Nanjing Kingmore) in accordance with section 772 of the Act. Because China is a non-market economy (NME) country within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* A list of sections in the Preliminary Decision Memorandum is in Appendix I to this notice.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 54349 (September 1, 2020).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68840 (October 30, 2020).

[3] *See* Memorandum, ''Certain Steel Racks and Parts Thereof from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 14, 2021.

[4] *See* ''Decision Memorandum for the Preliminary Results in the First Antidumping Duty Administrative Review of Certain Steel Racks and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order* 84 FR 48584 (September 16, 2019) (*Order*).

[6] *See* Memorandum, ''Certain Steel Racks from The People's Republic of China (A–570–088), No Shipment Inquiry for Hebei Minmetals Co., Ltd. during the period 03/04/2019 through 08/31/2020, dated August 9, 2021; *see also* Memorandum, ''Certain Steel Racks from The People's Republic of China (A–570–088), No Shipment Inquiry for Guangdong Wireking Housewares and Hardware Co., Ltd. during the period 03/04/2019 through 08/31/2020,'' dated August 9, 2021.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011); and the ''Assessment Rates'' section, below.

Separate Rates

In all proceedings involving an NME country, Commerce maintains a rebuttable presumption that all companies are subject to government control and, thus, should be assessed a single weighted-average dumping margin unless the company can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports so that it is entitled to separate rate status.[8] Commerce has preliminary determined that information placed on the record by Dongsheng, Nanjing Kingmore, Jiangsu Nova Intelligent Logistics Equipment Co., Ltd., Nanjing Ironstone Storage Equipment Co., Ltd., Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co., Ltd., and Xiamen Luckyroc Industry Co., Ltd., demonstrates that these companies are eligible for separate rate status.

However, Commerce has preliminarily determined that each of the companies whose name is listed in Appendix II to this notice has not demonstrated its eligibility for a separate rate because it did not file a separate rate application or separate rate certification with Commerce. Therefore, we have preliminarily treated the companies listed in Appendix II as part of the China-wide entity.

Because no party requested a review of the China-wide entity, the entity is not under review. Accordingly, the weighted-average dumping margin determined for the China-wide entity (*i.e.,* 144.50 percent) is not subject to change in this review. For additional information, *see* the Preliminary Decision Memorandum.

Dumping Margin for Non-Individually Examined Companies Granted a Separate Rate

The statute and Commerce's regulations do not address what weighted-average dumping margin to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act for guidance regarding establishing a weighted-average dumping margin for respondents which were not individually examined in an administrative review.

Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate in an investigation on the weighted average of the weighted-average dumping margins calculated for the individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Where the weighted-average dumping margins for the individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the estimated all-others rate.

The preliminary weighted-average dumping margin that we calculated for each of the mandatory respondents Dongsheng and Nanjing Kingmore is not zero, *de minimis,* or based entirely on facts available. Therefore, we assigned a weighted-average dumping margin to the non-individually examined companies to which we granted separate rate status equal to the simple average of the weighted-average dumping margins that we calculated for Dongsheng and Nanjing Kingmore, consistent with the guidance in section 735(c)(5)(B) of the Act.[9] For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We are assigning the following weighted-average dumping margins to the companies listed below for the period March 4, 2019, through August 31, 2020:

Exporters	Weighted-average dumping margin (percent)
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	9.02
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd	98.70
Review-Specific Rate Applicable to the Following Companies:	
Jiangsu Nova Intelligent Logistics Equipment Co., Ltd	49.85
Nanjing Ironstone Storage Equipment Co., Ltd	49.85
Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co., Ltd	49.85
Xiamen Luckyroc Industry Co., Ltd	49.85

Disclosure

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[10] Rebuttal briefs may be filed with Commerce no later than seven days after case briefs are due and may respond only to arguments raised in the case briefs.[11] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) The requesting party's name, address, and telephone number; (2) the number of individuals associated with the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues the

[8] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China,* 71 FR 53079, 53082 (September 8, 2006); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[9] *See* Memorandum, ''First Administrative Review of the Antidumping Duty Order on Certain Steel Racks and Parts Thereof from China: Preliminary Calculation of the Rate for Separate Rate Respondents,'' dated September 30, 2021.

[10] *See* 19 CFR 351.309(c)(ii).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2), (d)(2).

party intends to discuss at the hearing. Oral arguments at the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, Commerce will announce the date and time of the hearing. Parties should confirm by telephone the date and time of the hearing two days before the scheduled hearing date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. [13] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[14]

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[15] 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).

For the individually examined respondents whose rate is not zero or *de minimis,* we will calculate importer-specific assessment rates in accordance with 19 CFR 351.212(b)(1).[16] Where the respondent reported reliable entered values, we intend to calculate importer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total entered value of the merchandise sold to the importer/customer.[17] Where the respondent did not report entered values, we will calculate importer-specific assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total quantity of those sales. We also will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, we will use the per-unit assessment rate where entered values were not reported.[18]

Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* we will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[19] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For companies not individually examined in this administrative review that qualified for a separate rate and whose rate is not zero or *de minimis,* the assessment rate will be equal to the weighted-average dumping margin determined for the non-examined companies in the final results of this review.[20] If the weighted-average dumping margin for the non-examined companies is zero or *de minimis,* then the entries associated with these companies will be liquidated without regards to antidumping duties.

For companies that are found to not be eligible for a separate rate and therefore are considered as part of the China-wide entity, the assessment rate will be equal to the weighted-average dumping margin determined for the China-wide entity,[21] *i.e.,* 144.50 percent.

Pursuant to Commerce's refinement to its practice,[22] for sales of merchandise that were not reported in the U.S. sales data submitted by a respondent individually examined during this review, but the merchandise was entered into the United States during the POR, we will instruct CBP to liquidate any entries of such merchandise at the assessment rate for the China-wide entity. Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the assessment rate for the China-wide entity.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review in the **Federal Register** for all shipments of steel racks from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) For a company granted a separate rate in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review for the company (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed exporter of subject merchandise not listed in the table in the ''Preliminary Result of Review'' section of this notice that continues to be eligible for a separate rate, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (3) for a Chinese exporter of subject merchandise that does not have separate rate, the cash deposit rate will be the China-wide entity rate, which is 144.50 percent; and

[13] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[15] *See* 19 CFR 351.212(b)(1).

[16] We applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[17] *See* 19 CFR 351.212(b)(1).

[18] *Id.*

[19] *See* 19 CFR 351.106(c)(2).

[20] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015*, 81 FR 29528 (May 12, 2016), and accompanying Preliminary Decision Memorandum at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015*, 81 FR 54042 (August 15, 2016).

[21] *See Order.*

[22] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

(4) for a non-Chinese exporter of subject merchandise that does not have a separate rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: September 30, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Sections in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Extension of the Preliminary Results
V. Scope of the Order
VI. Preliminary Determination of No Shipments
VII. Selection of Respondents
VIII. Discussion of Methodology
IX. Currency Conversion
X. Recommendation

Appendix II

Companies Preliminary Determined to not be Eligible for a Separate Rate

1. Ateel Display Industries (Xiamen) Co., Ltd
2. Changzhou Tianyue Storage Equipment Co., Ltd
3. CTC Universal (Zhangzhou) Industrial Co., Ltd
4. David Metal Craft Manufactory Ltd
5. Fujian Ever Glory Fixtures Co., Ltd
6. Fujian First Industry and Trade Co., Ltd
7. Huanghua Hualing Garden Products Co., Ltd
8. Huanghua Hualing Hardware Products Co., Ltd
9. Huanghua Xingyu Hardware Products Co., Ltd
10. Huanghua Xinxing Furniture Co., Ltd
11. Huangua Haixin Hardware Products Co., Ltd
12. Huangua Qingxin Hardware Products Co., Ltd
13. i-Lift Equipment Ltd
14. Jiangsu Baigeng Logistics Equipments Co., Ltd
15. Jiangsu Kingmore Storage Equipment Manufacturing Co., Ltd
16. Johnson (Suzhou) Metal Products Co., Ltd
17. Master Trust (Xiamen) Import and Export Co., Ltd
18. Ningbo Beilun Songyi Warehouse Equipment Manufacturing Co., Ltd
19. Ningbo Xinguang Rack Co., Ltd
20. Qingdao Rockstone Logistics Appliance Co., Ltd
21. Redman Corporation
22. Redman Import & Export Limited
23. Tianjin Master Logistics Equipment Co., Ltd
24. Waken Display System Co., Ltd
25. Xiamen Baihuide Manufacturing Co., Ltd
26. Xiamen Ever Glory Fixtures Co., Ltd
27. Xiamen Golden Trust Industry & Trade Co., Ltd
28. Xiamen Huiyi Beauty Furniture Co., Ltd
29. Xiamen Kingfull Imp and Exp Co., Ltd. (d.b.a) Xiamen Kingfull Displays Co., Ltd
30. Xiamen LianHong Industry and Trade Co., Ltd
31. Xiamen Luckyroc Storage Equipment Manufacture Co., Ltd
32. Xiamen Meitoushan Metal Products Co., Ltd
33. Xiamen Power Metal Display Co., Ltd
34. Xiamen XinHuiYuan Industrial & Trade Co., Ltd
35. Xiamen Yiree Display Fixtures Co., Ltd
36. Yuanda Storage Equipment Ltd
37. Zhangjiagang Better Display Co., Ltd
38. Zhangzhou Hongcheng Hardware & Plastic Industry Co., Ltd

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results

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

SUMMARY: On September 27, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *GODACO Seafood Joint Stock Co.* v. *United States,* Consol. Court no. 18–00063, sustaining the Department of Commerce (Commerce)'s second remand results pertaining to the administrative review of the antidumping duty (AD) order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam) covering the period August 1, 2015, through July 31, 2016. 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 margin assigned to Can Tho Import-Export Joint Stock Company (CASEAMEX), Green Farms Seafood Joint Stock Company (Green Farms), Hung Vuong Corporation (HVG), NTSF Seafoods Joint Stock Company (NTSF), Southern Fishery Industries Company, Ltd. (South Vina), and Vinh Quang Fisheries Corporation (Vinh Quang).

DATES: Applicable October 7, 2021.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2018, Commerce published its *Final Results.*[1] Commerce assigned mandatory respondent GODACO Seafood Joint Stock Company (GODACO) a margin based on total adverse facts available (AFA). Commerce also assigned GODACO's rate to the companies in the review who were eligible for separate rates, including CASEAMEX, Green Farms, HVG, NTSF, South Vina, and Vinh Quang. Additionally, Commerce rejected a withdrawal of request for review filed by Golden Quality Seafood Corp. (Golden Quality) and subsequently found Golden Quality to be part of the Vietnam-wide entity.[2]

CASEAMEX, GODACO, Golden Quality, Green Farms, HVG, NTSF, South Vina, and Vinh Quang appealed Commerce's *Final Results.* On April 1, 2020, the CIT remanded the *Final Results* to Commerce, directing Commerce to: (1) Provide further explanation regarding its application of AFA to GODACO; and (2) consider South Vina's arguments regarding the assignment of a separate rate. In this opinion, the CIT did not address substantive arguments regarding the appropriate rate to be applied to the

[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, Final Results of No Shipments, and Partial Rescission of the Antidumping Duty Administrative Review; 2015–2016,* 83 FR 12717 (March 23, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *Id.*

other separate rate respondents, as that rate was based on GODACO's rate.[3]

In its First Remand Redetermination, issued in July 2020, Commerce continued to apply AFA to GODACO and continued to apply GODACO's rate (*i.e.,* $3.87/kilogram) to the separate rate companies, including South Vina.[4] In January 2021, the CIT sustained Commerce's application of total AFA to GODACO and selection of the AFA rate as in accordance with law; however, the CIT remanded Commerce's determination to it for a second time, instructing Commerce to reevaluate the rate assigned to the non-individually examined companies receiving separate rates who were parties to the litigation.[5]

In its Second Remand Redetermination, issued under protest in April 2021, Commerce recalculated the rate assigned to the separate rate companies using an average of the separate rates assigned in the four prior administrative reviews.[6] On September 27, 2021, the CIT sustained Commerce's Second Remand Redetermination.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's September 27, 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 its *Final Results* with respect to the dumping margin assigned to CASEAMEX, Green Farms, HVG, NTSF, South Vina, and Vinh Quang. The rate assigned to these six separate rate companies is $0.89 per kilogram.

Cash Deposit Requirements

Because CASEAMEX, Green Farms, HVG, NTSF, and Vinh Quang have 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 those exporters. For South Vina, which does 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 CIT order from liquidating entries that were exported by CASEAMEX, GODACO, Golden Quality, Green Farms, HVG, NTSF, South Vina, or Vinh Quang, and were entered, or withdrawn from warehouse, for consumption during the period August 1, 2015, through July 31, 2016. 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 exported by CASEAMEX, GODACO, Golden Quality, Green Farms, HVG, NTSF, South Vina, and Vinh Quang in accordance with 19 CFR 351.212(b).

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: September 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

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[3] *See GODACO Seafood Joint Stock Co.* v. *United States,* 435 F. Supp. 3d 1342 (CIT 2020). While interested parties challenged several aspects of Commerce's *Final Results,* the Court sustained the *Final Results* in all other respects.

[4] *See Final Results of Redetermination Pursuant to Court Remand, GODACO Seafood Joint Stock Co.* v. *United States,* Court No. 18–00063, Slip Op. 20–42 (CIT April 1, 2020), dated July 21, 2020 (First Remand Redetermination), available at *https://access.trade.gov/resources/remands/20-42.pdf.*

[5] *See GODACO Seafood Joint Stock Co.* v. *United States,* 494 F. Supp. 3d 1294 (CIT 2021).

[6] *See Final Results of Redetermination Pursuant to Court Remand, GODACO Seafood Joint Stock Co.* v. *United States,* Court No. 18–00063, Slip Op. 21–3 (CIT January 6, 2021), dated April 5, 2021 (Second Remand Redetermination).

[7] *See GODACO Seafood Joint Stock Co.* v. *United States,* Court No. 18–00063, Slip Op 21–131 (CIT September 27, 2021).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Manufacturers Coalition* v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–848]

Emulsion Styrene-Butadiene Rubber From Mexico: Preliminary Results of the Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that Industrias Negromex S.A. de C.V. (Negromex) made sales of emulsion styrene-butadiene rubber (ESB rubber) from Mexico at less than normal value during the period of review (POR) September 1, 2019, through August 31, 2020. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860 or (202) 482–0213, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2020, Commerce initiated an administrative review of the antidumping duty order on ESB rubber from Mexico, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[1] This review covers one producer/exporter of the subject merchandise, Negromex.

On May 18, 2021, Commerce extended the preliminary results by 120 days, until September 30, 2021.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The product covered by this order is ESB rubber from Mexico. For a full description of the scope, *see* the Preliminary Decision Memorandum.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68840 (October 30, 2020).

[2] *See* Memorandum, ''Emulsion Styrene-Butadiene Rubber: Extension of Deadline for Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated May 18, 2021.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Emulsion Styrene-Butadiene Rubber from Mexico; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. We have calculated constructed export price in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the respondent for the period September 1, 2019, through August 31, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Industrias Negromex S.A. de C.V	2.65

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If Negromex's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If the respondent's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[4]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced Negromex for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[5]

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the finals results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Negromex will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.52 percent,[6] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.[7] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS,[10] and must be served on interested parties. Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to

[4] *See* section 751(a)(2)(C) of the Act.

[5] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[6] *See Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders,* 82 FR 42790 (September 12, 2017).

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[9] *See* 19 CFR 351.309 (c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See Temporary Rule.*

section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 351.221(b)(4).

Dated: September 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Product Comparisons
VI. Date of Sale
VII. Constructed Export Price
VIII. Normal Value
IX. Currency Conversion
X. Recommendation

[FR Doc. 2021–21822 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863; A–475–832; A–570–026; A–580–878; A–583–856]

Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Final Results of Expedited Sunset Reviews of Antidumping Duty Orders

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

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on corrosion-resistant steel products (CORE) from India, Italy, the People's Republic of China (China), the Republic of Korea (Korea), and Taiwan would likely lead to a continuation or recurrence of dumping at the levels identified in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: Applicable October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2016, Commerce published the AD orders on CORE from India, Italy, China, Korea, and Taiwan in the **Federal Register**.[1] On June 1, 2021, Commerce published the initiation of the first sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On June 14 and 16, 2021, Commerce received timely and complete notices of intent to participate in these sunset reviews from Nucor Corporation (Nucor), California Steel Industries (CSI), Cleveland-Cliffs Inc. (Cleveland-Cliffs), Steel Dynamics Inc. (SDI), and United States Steel Corporation (US Steel) (collectively, domestic interested parties),[3] within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] The domestic interested parties claimed interested party status within the meaning of section 771(9)(C) of the Act as U.S. producers in the United States of the domestic like product.[5]

On July 1, the domestic interested parties filed timely and adequate substantive responses, within the deadline specified in 19 CFR 351.218(d)(3)(i).[6] Commerce did not

[1] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (collectively, *Orders*); *see also Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Notice of Correction to the Antidumping Duty Orders,* 81 FR 58475 (August 25, 2016).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 29239 (June 1, 2021).

[3] *See* Domestic Interested Parties' Letters, ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from India: Notice of Intent to Participate in Sunset Review''; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from Italy: Notice of Intent to Participate in Sunset Review''; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from the People's Republic of China: Notice of Intent to Participate in Sunset Review''; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Intent to Participate in Sunset Review''; and ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from Taiwan: Notice of Intent to Participate in Sunset Review,'' each dated June 14, 2021 (Cleveland Cliffs' Letters); ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Corrosion-Resistant Steel Products from India: Notice of Intent to Participate''; ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Corrosion-Resistant Steel Products from Italy: Notice of Intent to Participate''; ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Corrosion-Resistant Steel Products from the People's Republic of China: Notice of Intent to Participate''; ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Intent to Participate''; and ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Corrosion-Resistant Steel Products from Taiwan: Notice of Intent to Participate,'' each dated June 16, 2021 (CSI's and SDI's Letters); ''Five-Year ('Sunset') Review Of Antidumping Duty Order on Corrosion-Resistant Steel Products from India: Notice of Intent to Participate''; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from Italy: Notice of Intent to Participate''; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from the People's Republic of China: Notice of Intent to Participate''; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Intent to Participate''; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion-Resistant Steel Products from Taiwan: Notice of Intent to Participate,'' each dated June 16, 2021 (US Steel's Letters); and ''Certain Corrosion-Resistant Products from India: Notice of Intent to Participate in Sunset Review''; ''Certain Corrosion-Resistant Products from Italy: Notice of Intent to Participate in Sunset Review''; ''Certain Corrosion-Resistant Products from the People's Republic of China: Notice of Intent to Participate in Sunset Review''; ''Certain Corrosion-Resistant Products from the Republic of Korea: Notice of Intent to Participate in Sunset Review''; and ''Certain Corrosion-Resistant Products from Taiwan: Notice of Intent to Participate in Sunset Review,'' each dated June 16, 2021 (Nucor's Letters) (collectively, Notice of Intent to Participate Letters).

[4] The domestic interested parties include Nucor; CSI; Cleveland-Cliffs (AK Steel Corporation and ArcelorMittal USA LLC were both part of the group of domestic producers that filed the petitions and participated in the original investigations. In 2020, Cleveland-Cliffs acquired AK Steel and the majority of ArcelorMittal USA's operations); SDI.; and US Steel.

[5] *See* Notice of Intent to Participate Letters.

[6] *See* Domestic Interested Parties' Letters, ''First Five-Year ('Sunset') Review of Antidumping Order on Corrosion-Resistant Steel Products from India: Domestic Industry's Substantive Response to Notice of Initiation''; ''First Five-Year ('Sunset') Review of Antidumping Order on Corrosion-Resistant Steel Products from Italy: Domestic Industry's Substantive Response to Notice of Initiation''; ''First Five-Year ('Sunset') Review of Antidumping Order on Corrosion-Resistant Steel Products from the People's Republic of China: Domestic Industry's Substantive Response to Notice of Initiation''; ''First Five-Year ('Sunset') Review of Antidumping Order on Corrosion-Resistant Steel Products from the Republic of Korea: Domestic Industry's Substantive Response to Notice of Initiation''; and ''First Five-Year ('Sunset') Review of Antidumping Order on Corrosion-Resistant Steel Products from Taiwan: Domestic Industry's Substantive Response to Notice of Initiation,'' each dated July 1, 2021.

receive substantive responses from any respondent interested party with respect to any of the *Orders* covered by these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders.*

Scope of the Orders

The merchandise covered by the *Orders* is CORE from India, Italy, China, Korea, and Taiwan. For a complete description of the scope of the *Orders, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins of up to:

Country	Weighted average dumping margin (percent)
India	4.43
Italy	92.12
China	209.97
Korea	8.75
Taiwan	10.34

Notification Regarding 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. Timely notification of the return or destruction of APO materials, or conversion to judicial protective orders, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: September 28, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. History of the *Orders*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Dumping Margins Likely To Prevail
VII. Final Results of Sunset Reviews
VIII. Recommendation

[FR Doc. 2021–21821 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) September 1, 2019, through August 31, 2020. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or Jacob Garten, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–3342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2020, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on heavy walled rectangular welded carbon steel pipes and tubes from Korea.[1] This review covers two producers and exporters of the subject merchandise.[2] Commerce selected Dong-A Steel Company (DOSCO) and HiSteel Co., Ltd, (HiSteel) for individual examination.

On May 7, 2021, Commerce extended the preliminary results of this review by 120 days, until September 30, 2021.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The products covered by the order are certain heavy walled rectangular welded steel pipes and tubes from the Republic of Korea (Korea). Products subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.[5]

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders on Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan,'' dated concurrently with this notice.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68840 (October 30, 2020).

[2] We received a timely submission withdrawing all review requests for 27 companies; we rescinded the review with respect to these companies. *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rescission of Antidumping Duty Administrative Review; 2019–2020, in Part,* 86 FR 14075 (March 12, 2021).

[3] *See* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Preliminary Results of the 4th Antidumping Duty Administrative Review,'' dated May 7, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/.*

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period September 1, 2019, through August 31, 2020:

Producers/exporters	Weighted-average dumping margin (percent)
Dong-A Steel Co., Ltd[6]	1.62
HiSteel Co., Ltd	10.24

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[7] Case briefs or other written comments may be submitted to Commerce. A timeline for the submission of case briefs and written comments will be provided to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[12] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[13]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[14] If the weighted average dumping margin for DOSCO or HiSteel is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[15] Where the respondent did not report entered value, we will calculate the entered value in order to calculate the assessment rate. If the weighted-average dumping margin for the respondents listed above is zero or *de minimis* in the final results, or an importer-specific assessment rate is zero or *de minimis* in the final results, we will instruct CBP not to assess antidumping duties on any of their entries in accordance with the *Final Modification for Reviews.*[16]

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[17]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will

[6] In the prior administrative review, Commerce collapsed Dong-A Steel Co., Ltd., with its affiliated producer SeAH Steel Corporation, and we continue to treat these companies as a single entity, in accordance with 19 CFR 351.401(f). *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 35060, 35061 (July 1, 2021).

[7] *See* 19 CFR 351.224(b).

[8] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* section 751(a)(3)(A) of the Act.

[14] *See* 19 CFR 351.212(b).

[15] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[16] *Id.* at 8102.

[17] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or a previous segment, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.24 percent, the all-others rate established in the less-than-fair-value investigation.[18] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2021–21852 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–DS–P

[18] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865, 62866 (September 13, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea were not sold in the United States at less than normal value during the period of review (POR), September 1, 2019, through August 31, 2020. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, George McMahon, or Marc Castillo, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475, (202) 482–1167, or (202) 482–5019, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated this review on October 30, 2020.[1] We selected two mandatory respondents in this review, Hyundai Steel Company (Hyundai) and POSCO International Corporation (PIC).[2]

For a more detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice.[3] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* A list of topics discussed in the Preliminary Decision Memorandum is attached as Appendix I to this notice.

Scope of the Order

The product covered by the *Order*[4] is cold-rolled steel from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Examined Companies

For the companies that were not selected for individual review, we assigned a rate based on the rates for the respondents that were selected for individual examination.[5] Consistent with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle,* we are applying to the 38 companies not selected for individual examination a rate of zero percent, because we calculated rates of zero for both mandatory respondents, Hyundai and POSCO/PIC.[6] These are the only rates determined in this review for individually examined respondents and, thus, we are applying this rate to the 38 firms not selected for individual examination under section 735(c)(5)(B) of the Act.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68840 (October 30, 2020).

[2] *See* Memorandum, ''2019–2020 Administrative Review of Cold-Rolled Steel Flat Products from the Republic of Korea: Respondent Selection,'' dated December 15, 2020. Consistent with the *CRS from Korea 2018–19 Final Results,* Commerce has collapsed POSCO and PIC, treating these companies as a single entity. In the *CRS from Korea 2018–19 Final Results,* Commerce determined that PIC is the successor-in-interest to POSCO Daewoo Corporation (PDW), and, as a consequence, is part of the collapsed POSCO single entity. *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 40808 (July 29, 2021) (*CRS from Korea 2018–19 Final Results*), and accompanying Issues and Decision Memorandum. POSCO submitted its questionnaire responses in this review on behalf of the collapsed entity, and PIC was initially selected by Commerce for individual examination. We continue to refer to the collapsed entity as ''POSCO/PIC'' hereafter.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Certain Cold Rolled Steel Flat Products from the Republic of Korea; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016) (*Order*).

[5] *See* section 735(c)(5)(A) of the Act.

[6] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*).

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period September 1, 2019, through August 31, 2020:

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.00
POSCO/POSCO International Corporation	0.00
Non-Examined Companies[7]	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). Interested parties may comment by submitting case briefs no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, the content of which is limited to issues raised in the case briefs, must be filed within seven days from the deadline date for the submission of case briefs.[9]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Case and rebuttal briefs should be filed using ACCESS[11] and must be served on interested parties.[12] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[13] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[14]

Assessment Rates

Upon issuing the final results, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[15] If the weighted-average dumping margin for an individually examined respondent is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[16] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above de minimis (*i.e.,* 0.50 percent). For any individually examined respondent whose weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

In accordance with Commerce's ''automatic assessment'' practice,[18] for entries of subject merchandise during the POR produced by Hyundai and POSCO/PIC for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate of 20.33 percent established in the LTFV investigation.[19]

For the 38 companies which were not selected for individual examination,[20] we intend to assign an assessment rate based on the cash deposit rate calculated for the companies selected for mandatory review (*i.e.,* Hyundai and POSCO/PIC).[21] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[22]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hyundai, POSCO/PIC, and other companies listed in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.33 percent,[23] the all-others rate established in the less-than-fair-value investigation. These cash deposit

[7] *See* Appendix II for a full list of these companies.

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See generally* 19 CFR 351.303.

[12] *See* 19 CFR 351.303(f).

[13] *See* 19 CFR 351.310(d).

[14] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[15] *See* 19 CFR 351.212(b)(1).

[16] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[17] *Id.,* 77 FR at 8102–3; *see also* 19 CFR 351.106(c)(2).

[18] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[19] *See Order.*

[20] *See* Appendix II.

[21] *See* section 735(c)(5)(A) of the Act; *see also* Preliminary Decision Memorandum at Section IV, ''Rate for Non-Examined Companies.

[22] *See* section 751(a)(2)(C) of the Act.

[23] *See Order.*

requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Rate for Non-Examined Companies
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

Appendix II

List of Companies Not Individually Examined

1. AJU Steel Co., Ltd.
2. Ameri-Source Korea
3. Dai Yang Metal Co., Ltd.
4. DCM Corporation
5. DK GNS Co., Ltd.
6. Dongbu Incheon Steel Co., Ltd
7. Dongbu Steel Co., Ltd.
8. Dongkuk Industries Co., Ltd.
9. Dongkuk Steel Mill Co., Ltd.
10. GS Global Corporation
11. Hanawell Co., Ltd.
12. Hankum Co., Ltd.
13. Hwashin Co. Ltd.
14. Hyosung TNC Corporation
15. Hyundai Corporation
16. JMP Co., Ltd.
17. KG Dongbu Steel Co., Ltd.
18. Korinox Co., Ltd.
19. Mikwang Precision Manufacture Co., Ltd.
20. Okaya Korea Co., Ltd.
21. POSCO Coated and Colored Steel Co., Ltd.
22. Samhwan Steel Co., Ltd.
23. Samsung C & T Corporation
24. Samsung Electronics Co., Ltd.
25. Samsung STS Co., Ltd.
26. SeAH Changwon Integrated Special Steel Corporation
27. SeAH Coated Metal Corporation
28. SeAH Steel Corporation
29. Shin Steel Co., Ltd.
30. Shin Young Co., Ltd.
31. Signode Korea Inc.
32. SK Networks Co., Ltd.
33. Soon Hong Trading Co., Ltd.
34. Sungjin Co., Ltd.
35. Taesan Corporation
36. TCC Steel Corporation
37. TI Automotive Ltd.
38. Wolverine Korea Co., Ltd.

[FR Doc. 2021–21790 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB470]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ). The meeting is a hybrid meeting open to the public offering both in-person and virtual options for participation.

DATES: The meeting will convene Monday, October 25 through Wednesday, October 27, 2021, from 8:30 a.m. to 5:30 p.m., CDT and on Thursday, October 28, 2021, from 8:30 a.m. to 4:30 p.m., CDT.

ADDRESSES: The meeting will take place at Perdido Beach Resort, located at 27200 Perdido Beach Resort Boulevard, Orange Beach, AL 36561. Please note, in-person meeting attendees will be expected to follow any current COVID–19 safety protocols as determined by the Council, hotel and the City of Orange Beach. Such precautions may include masks, room capacity restrictions, and/or social distancing. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, October 25, 2021; 8:30 a.m.–5:30 p.m., CDT

The meeting will begin open to the public in a Full Council Session to review and adopt Council Committee Assignments for October 2021 through August 2022; and, receive an update on Hurricane Ida's Impacts to Fishing Communities. Committee sessions will begin approximately 8:45 a.m. with the *Shrimp* Committee discussing the *Shrimp* Focus Group, review Draft Framework Action: Modification of the Vessel Position Data Collection Program for the Gulf of Mexico *Shrimp* Fishery.

The Gulf SEDAR Committee will receive a meeting summary from the October 2021 SEDAR Steering Committee and review the Gulf SEDAR Stock Assessment Schedule.

The Sustainable Fisheries Committee will review the Draft Allocation Review Guidelines, SSC Recommendations on Using Field Experiments to Assess Alternative Mechanisms for Distributing Fish to the Recreational Sector, and a Report to Congress on Shark and Dolphin Depredation.

The Mackerel Committee will convene after lunch. They will review *Coastal Migratory Pelagics* (CMP) Landings and receive a presentation on the History of CMP Permits and Sale of Recreational *Cobia.* They will review and discuss Final Action Item: Amendment 32: Modifications to the Gulf of Mexico Migratory Group *Cobia* Catch Limits, Possession Limits, Size Limits, and Framework Procedure, discuss Draft Amendment 33:

Modifications to the Gulf of Mexico Migratory Group King Mackerel Catch Limits and Sector Allocations and Public Hearing Draft Amendment 34: Atlantic Migratory Group King *Mackerel* Catch Levels and Atlantic King and Spanish *Mackerel* Management Measures.

Immediately following *Mackerel* Committee, there will be a virtual and in-person Public Hearing on Final Action: Amendment 32: Modifications to the Gulf of Mexico Migratory Group *Cobia* Catch Limits, Possession Limits, Size Limits, and Framework Procedure.

Tuesday, October 26, 2021; 8:30 a.m.–5:30 p.m., CDT

The *Reef Fish* Committee will convene to review *Reef Fish* Landings and Individual Fishing Quota (IFQ) Landings and Final Action Item: Draft Framework Action: Modification of Gulf of Mexico *Red Grouper* Catch Limits. The Committee will receive presentations on SEDAR 70: *Greater Amberjack* Stock Assessment Report

and on SEDAR 72: Gag Grouper Stock Assessment Report, and discuss SSC Recommendations for both. The Committee will hold a discussion on Draft *Snapper Grouper* Amendment 44 and *Reef Fish* Amendment 55: Modifications to Southeastern U.S. *Yellowtail Snapper* Jurisdictional Allocations, Catch Limits, and South Atlantic Sector Annual Catch Limits and on Individual Fishing Quota Programs: Presentation from the National Academy of Sciences on The Use of Limited Access Privilege Programs in Mixed-Use Fisheries, and hold a discussion on Focus Group Formation. The Committee will review Draft Framework Action: Modification of *Vermillion Snapper* Catch Limits, and discuss SSC Recommendations on Final Great *Red Snapper* Count (GRSC) report and Louisiana Department of Wildlife and Fisheries (LDWF) *Red Snapper* Abundance Studies.

Immediately following the *Reef Fish* Committee, a virtual and in-person Question and Answer Session focused on For-Hire Reporting Requirements hosted by National Marine Fisheries Services (NMFS), Gulf Council Leadership and NMFS-Approved Vessel Monitoring System (VMS) Vendors.

Wednesday, October 27, 2021; 8:30 a.m.–5:30 p.m., CDT

The Data Collection Committee will receive a presentation from the National Academy of Sciences on Data and Management Strategies for Recreational Fisheries with Annual Catch Limits, update on Southeast For-hire Integrated Electronic Reporting (SEFHIER) Program, and review Draft Framework Action: Modification to Location Reporting Requirements for For-Hire and Commercial Vessels and Data Collection Advisory Panel (AP) Recommendations. The Committee will receive a presentation on Update to Modifications to the Commercial Electronic Reporting Program and discuss remaining Data Collection AP recommendations.

Following lunch, at approximately 1:30 p.m., the Council will reconvene with a Call to Order, Announcements and Introductions, Adoption of Agenda and Approval of Minutes. The Council will receive presentation on Network Analysis of Quota Trading in the Gulf of Mexico Individual Fishing Quota Fisheries.

The Council will hold public testimony from 2:15 p.m. to 5:30 p.m., CDT on Final Action Items: Amendment 32: Modifications to the Gulf of Mexico Migratory Group *Cobia* Catch Limits, Possession Limits, Size Limits, and Framework Procedure and Draft Framework Action: Modification of Gulf of Mexico *Red Grouper* Catch Limits*;* and open testimony on other fishery issues or concerns. Public comment may begin earlier than 2:15 p.m. CDT, but will not conclude before that time. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room. Persons wishing to give public testimony virtually must sign up on the Council website on the day of public testimony. Registration for virtual testimony closes one hour (1:15 p.m. CDT) before public testimony begins.

Thursday, October 28, 2021; 8:30 a.m.–4:30 p.m., CDT

The Council will receive Committee reports from *Shrimp,* Gulf SEDAR, *Mackerel,* Data Collection, Sustainable Fisheries and *Reef Fish* Management Committees. The Council will receive updates from the following supporting agencies: South Atlantic Fishery Management Council; Alabama Law Enforcement Efforts; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will discuss any Other Business items.

—Meeting Adjourns

The meeting will be a hybrid meeting; both in-person and virtual. You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

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

Dated: September 30, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–21748 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting and Solicitation of Nominations for the National Sea Grant Advisory Board (Board)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Public Meeting and Notice of Solicitation for Nominations for the National Sea Grant Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board), a Federal Advisory Committee. Board members will discuss and provide advice on the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website. For more information on this Federal Advisory Committee please visit the Federal Advisory Committee database: *https://www.facadatabase.gov/FACA/FACAPublicPage.* This notice also responds to the Sea Grant Program Improvement Act of 1976, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board. To apply for membership to the Board, applicants should submit a current resume. A cover letter highlighting specific areas of expertise relevant to the purpose of the Board is helpful, but not required. Nominations will be accepted by email. NOAA is an equal opportunity employer.

DATES: The announced meeting is scheduled for Thursday, November 4, 2021 from 12:00 p.m. to 4:45 p.m. and Friday, November 5, 2021 from 1:00 p.m. to 3:45 p.m. Eastern Time. There is

no due date for nominations, however the program intends to begin reviewing applications to fill upcoming vacancies by January 31, 2022. Applications will be kept on file for consideration of any Board vacancy for a period of three years from January 31, 2024.

ADDRESSES: The meeting will be held virtually only. For more information and for virtual access see below in the ''Contact Information'' section.

Status: The meeting will be open to public participation with a public comment period on Thursday, November 4, 2021 at 4:30 p.m. Eastern Time. (Check agenda using the link in the ''Matters to be Considered'' section to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Monday, November 1, 2021 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program Email: *oar.sg-feedback@noaa.gov*. Phone Number: 301–257–5068. To attend via webinar, please R.S.V.P to Donna Brown (contact information above) by Monday, November 1, 2021.

Special Accommodations: The Board meeting is virtually accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Monday, November 1, 2021.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. Upon selection and agreement to serve on the National Sea Grant Advisory Board, you become a Special Government Employee (SGE) of the United States Government. According to 18 U.S.C. 202(a), an SGE is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a full time or intermittent basis. Please be aware that after the selection process is complete, applicants selected to serve on the Board must complete the following actions before they can be appointed as a Board member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting), and other applicable forms, both conducted through NOAA Workforce Management; and

(b) Confidential Financial Disclosure Report as an SGE, you are required to file a Confidential Financial Disclosure Report annually to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial Disclosure Form at the following website. *https://oge.gov/web/oge.nsf/OGE%20Forms/60739EAC38F5697785258363_005C02C9.*

Matters to be Considered: Board members will discuss and vote on one decisional matter—replacing the Chair of Resilience and Social Justice Subcommittee. *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx.*

Dated: September 8, 2021.

Eric Locklear,

Acting Chief Financial Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–21791 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB474]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public focus group meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a one-day meeting via webinar of its Focus Group on Shrimp Data Collection Framework Action.

DATES: The webinar will convene on Thursday, October 21, 2021, 9 a.m. until 5 p.m., EDT, (8 a.m.–4 p.m. CDT). For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Please visit the Gulf Council website *www.gulfcouncil.org* for meeting materials and webinar registration information.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; *matt.freeman@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Thursday, October 21, 2021; 9 a.m.–5 p.m. EDT (8 a.m.–4 p.m. CDT)

Meeting will begin with a review of the charge and objectives. The focus group will receive an overview of current cELB units' programming and implementation, followed by a presentation on elements of data from current cELB units and background information from Gulf States Marine Fisheries Commission's (GSMFC) process for data receival, security, and storage. The focus group will then hold a discussion for Objectives 2 through 4.

Following the lunch break, the focus group will review a comparison table, background information from Vessel Monitoring System (VMS) tech specs, and proposed tech specs. The focus group will then hold a discussion for Objective 5, followed by a presentation on a case study of Gulf Reef Fish VMS data inputted into the Gulf Shrimp effort algorithm for illustration of compatibility.

The focus group will discuss Objective 6 with background information on Framework Action: Modification of the Vessel Position Data Collection Program for the Gulf of Mexico Shrimp Fishery.

The focus group will receive public comment and then summarize its advice and proposed next steps for the Council.

–Meeting Adjourns

The meeting will be broadcast via webinar. You may register by visiting *www.gulfcouncil.org* and clicking on the Focus Group meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take-action to address the emergency at least 5 working days prior to the meeting.

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

Dated: September 30, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–21737 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648–XB430]

Nominations to the Marine Mammal Scientific Review Groups

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

ACTION: Notice; request for nominations.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), the Secretary of Commerce established three independent regional scientific review groups (SRG) to provide advice on a range of marine mammal science and management issues. NMFS conducted a membership review of the Alaska, Atlantic, and Pacific SRGs, and is soliciting nominations for new members to fill vacancies and gaps in expertise (see below).

DATES: Nominations must be received by November 5, 2021.

ADDRESSES: Nominations can be emailed to *Zachary.Schakner@noaa.gov,* Assessment Branch, Office of Science and Technology, National Marine Fisheries Service, Attn: SRGs.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Schakner, Office of Science and Technology, 301–427–8106, *Zachary.Schakner@noaa.gov.* Information about the SRGs, including the SRG Terms of Reference, is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/scientific-review-groups.*

SUPPLEMENTARY INFORMATION: Section 117(d) of the MMPA (16 U.S.C. 1386(d)) directs the Secretary of Commerce to establish three independent regional SRGs to advise the Secretary (authority delegated to NMFS). The Alaska SRG advises on marine mammals that occur in waters off Alaska that are under the jurisdiction of the United States. The Pacific SRG advises on marine mammals that occur in waters off the U.S. West Coast, Hawaiian Islands, and the U.S. Territories in the Central and Western Pacific that are under the jurisdiction of the United States. The Atlantic SRG advises on marine mammals that occur in waters off the Atlantic coast, Gulf of Mexico, and U.S. Territories in the Caribbean.

SRG members are highly qualified individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b) of the MMPA. The SRGs provide expert reviews of draft marine mammal stock assessment reports and other information related to the matters identified in section 117(d)(1) of the MMPA, including:

A. Population estimates and the population status and trends of marine mammal stocks;

B. Uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;

C. Uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

D. Research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;

E. The actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and

F. Any other issue which the Secretary or the groups consider appropriate.

SRG members collectively serve as independent advisors to NMFS and the U.S. Fish and Wildlife Service and provide their expert review and recommendations through participation in the SRG. Members attend annual meetings and undertake activities as independent persons providing expertise in their subject areas. Members are not appointed as representatives of professional organizations or particular stakeholder groups, including government entities, and are not permitted to represent or advocate for those organizations, groups, or entities during SRG meetings, discussions, and deliberations.

SRG membership is voluntary, and, except for reimbursable travel and related expenses, service is without pay. The term of service for SRG members is 3 years, and members may serve up to three consecutive terms if reappointed.

NMFS annually reviews the expertise available on the SRG and identifies gaps in the expertise that is needed to provide advice pursuant to section 117(d) of the MMPA. In conducting the reviews, NMFS attempts to achieve, to the maximum extent practicable, a balanced representation of viewpoints among the individuals on each SRG.

Expertise Solicited

For the Alaska SRG, NMFS seeks individuals with expertise in one or more of the following areas (not in order of priority): Alaska Native harvest and use of marine mammals for subsistence and handicraft purposes, especially in the Gulf of Alaska, Kodiak, and the Arctic; abundance estimation, especially distance sampling and mark-recapture methods and survey design; climate and oceanographic changes impacting marine mammals; quantitative ecology, population dynamics, modeling, and statistics, especially as related to abundance, bycatch, and distribution; Alaska commercial fishing industry and commercial fishing methods/gear, particularly fisheries with marine mammal bycatch; genetics as a method of identifying population structure; anthropogenic impacts, particularly fisheries interactions, vessel strikes, and the effects of anthropogenic sound; and marine mammal health.

For the Pacific SRG (including waters off the Pacific coast, Hawaiian Islands and the U.S. Territories in the Central and Western Pacific), NMFS seeks individuals with expertise in one or more of the following areas (not in order of priority): Stock assessment, including quantitative ecology, population dynamics, modeling or statistics; West Coast and Pacific Islands marine mammal expertise, including assessment, life history, ecology, or human-marine mammal interactions; applied conservation and management, including evaluating bycatch or fisheries impacts on marine mammals; marine mammal stock definition under

the MMPA; incorporation of methodological or technological advancements for data collection or data analysis, particularly for large complex datasets; West Coast and Pacific Islands fishing gear/techniques, including fisheries/marine mammal interactions for State, Tribal, or regional/local fisheries; oceanography or marine ecology, particularly decadal and long-term understanding and impacts of climate change.

For the Atlantic SRG (including waters off the Atlantic coast, Gulf of Mexico, and U.S. Territories in the Caribbean), NMFS seeks individuals with expertise in one or more of the following priority areas (not in order of priority): Protected species conservation, wildlife management, and policy/science interface especially in the non-governmental sector; expertise in statistical analyses relevant to marine mammal population assessment including line-transect methods, mark-recapture methods, bycatch estimation, survey design, and population dynamics modelling; marine mammal life history, health, and ecology; Gulf of Mexico and/or Atlantic Ocean cetacean population dynamics with a focus on estuarine and nearshore bottlenose dolphins; Caribbean marine mammals; marine mammal health, physiology, energetics, genetics, and/or toxicology; fishing gear and practices, particularly fisheries with protected species bycatch, and bycatch reduction in the Southeast; emerging ecosystem changes such as climate change, renewable energy, and/or marine aquaculture impacts on marine mammal populations; and manatee population dynamics.

Submitting a Nomination

Nominations for new members should be sent to Dr. Zachary Schakner in the NMFS Office of Science & Technology (see **ADDRESSES**) and must be received by November 5, 2021. Nominations should be accompanied by the individual's curriculum vitae and detailed information regarding how the recommended person meets the minimum selection criteria for SRG members (see below). Nominations should also include the nominee's name, address, telephone number, and email address. Self-nominations are acceptable.

Selection Criteria

Although the MMPA does not explicitly prohibit Federal employees from serving as SRG members, NMFS interprets MMPA section 117(d)'s reference to the SRGs as ''independent'' bodies that are exempt from Federal Advisory Committee Act requirements to mean that SRGs are intended to augment existing Federal expertise and are not composed of Federal employees or contractors.

When reviewing nominations, NMFS, in consultation with the U.S. Fish and Wildlife Service, will consider the following six criteria:

(1) Ability to make time available for the purposes of the SRG;

(2) Knowledge of the species (or closely related species) of marine mammals in the SRG's region;

(3) Scientific or technical achievement in a relevant discipline, particularly the areas of expertise identified above, and the ability to serve as an expert peer reviewer for the topic;

(4) Demonstrated experience working effectively on teams;

(5) Expertise relevant to current and expected needs of the SRG, in particular, expertise required to provide adequate review and knowledgeable feedback on current or developing stock assessment issues, techniques, etc. In practice, this means that each member should have expertise in more than one topic as the species and scientific issues discussed in SRG meetings are diverse; and

(6) No conflict of interest with respect to their duties as a member of the SRG.

Next Steps

Following review, nominees who are identified by NMFS as potential new members must be vetted and cleared in accordance with Department of Commerce policy. NMFS will contact these individuals and ask them to provide written confirmation that they are not registered Federal lobbyists or registered foreign agents, and to complete a confidential financial disclosure form, which will be reviewed by the Ethics Law and Programs Division within the U.S. Department of Commerce's Office of General Counsel. All nominees will be notified of a selection decision in advance of the 2022 SRG meetings.

Dated: September 30, 2021.

Evan Howell,

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 2021–21778 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Solicitation for New Members: Ocean Exploration Advisory Board (OEAB)

AGENCY: Office of Ocean Exploration and Research (OER), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of solicitation for applications for new members of the NOAA Ocean Exploration Advisory Board.

SUMMARY: NOAA is soliciting applications to fill up to four membership vacancies on the Ocean Exploration Advisory Board (OEAB).

DATES: Application materials must be received no later than November 5, 2021.

ADDRESSES: Submit application materials to Christa Rabenold via email: *christa.rabenold@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: David McKinnie, OEAB Designated Federal Officer: 206–526–6950; *david.mckinnie@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA is soliciting applications to fill up to four vacancies on the OEAB with individuals demonstrating expertise in areas of scientific research relevant to ocean exploration including engineering, data science, deep ocean biology, geology, oceanography, marine archaeology, and ocean science education and communication. People of color, women, first-generation professionals, individuals with disabilities, LGBTQ+ individuals, and other communities that have historically faced professional barriers are encouraged to apply—especially those from indigenous communities and from the U.S. west coast, Alaska, and Hawaii. Representatives of other federal agencies involved in ocean exploration are encouraged to apply. The new OEAB members will serve initial three-year terms, renewable once.

The purpose of the OEAB is to advise the NOAA Administrator on matters pertaining to ocean exploration. The OEAB functions as an advisory body in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., with the exception of section 14. It reports to the NOAA Administrator, as directed by 33 U.S.C. 3405.

The OEAB consists of approximately ten members, including a chair and co-chair(s), designated by the NOAA Administrator in accordance with FACA requirements and the terms of the approved OEAB Charter and Balance Plan.

The OEAB was established:

(1) To advise the Administrator on priority areas for survey and discovery;

(2) To assist the program in the development of a five-year strategic plan for the fields of ocean, marine, and

Great Lakes science, exploration, and discovery;

(3) To annually review the quality and effectiveness of the proposal review process established under section 12003(a)(4); and

(4) To provide other assistance and advice as requested by the Administrator.

OEAB members are appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable expenses incurred in performing such duties but will not be reimbursed for their time. All OEAB members serve at the discretion of the NOAA Administrator.

The OEAB meets three to four times each year, exclusive of subcommittee, task force, and working group meetings.

As a Federal Advisory Committee, the OEAB's membership is required to be balanced according to the board's Balance Plan. The Balance Plan requires that a diversity of viewpoints are represented, include the interests of geographic regions of the country, and the diverse sectors of our society. New members will be selected for their expertise in fields relevant to ocean exploration and to comply with the OEAB Balance Plan.

For more information about the OEAB, visit *https://oeab.noaa.gov.*

Although the OEAB reports directly to the NOAA Administrator, OER, which is part of the NOAA Office of Oceanic and Atmospheric Research, provides staffing and other support for the OEAB. OER's mission is to explore the ocean for national benefit.

OER:

- Explores the ocean to make discoveries of scientific, economic, and cultural value, with priority given to the U.S. Exclusive Economic Zone and Extended Continental Shelf.
- Promotes technological innovation to advance ocean exploration.
- Provides public access to data and information.
- Encourages the next generation of ocean explorers, scientists, and engineers.
- Expands the national ocean exploration program through partnerships.

For more information about OER, please visit *https://oceanexplorer.noaa.gov.*

Applications: An application is required to be considered for OEAB membership. To apply, please submit (1) your full name, title, institutional affiliation, and contact information (mailing address, email address, telephone and fax numbers) with a short description of your qualifications relative to the statutory purpose of the OEAB and the ocean exploration act established under 33 U.S.C. 3401 *et seq.;* (2) a resume or curriculum vitae (maximum length four pages); and (3) a cover letter stating your interest in serving on the OEAB and highlighting specific areas of expertise relevant to the purpose of the OEAB.

Dated: September 29, 2021.

Eric Locklear,

Acting Chief Financial Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–21792 Filed 10–5–21; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0100]

Federal Register Notice of Request for Written Comments in Support of the Department of Defense's One-Year Response to Executive Order 14017, "America's Supply Chains"; Correction

AGENCY: Office of the Deputy Assistant Secretary of Defense for Industrial Policy (IndPol), Department of Defense (DoD).

ACTION: Notice of request for public comments; correction.

SUMMARY: The Department of Defense is correcting a notice that appeared in the **Federal Register** on September 28, 2021. Subsequent to publication of the notice, the DoD discovered that questions in the Written Comments section of the **SUPPLEMENTARY INFORMATION** section were not numbered correctly. DoD is issuing this correction to provide the correct numbering.

DATES: This correction is effective on October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, 571–372–0485.

SUPPLEMENTARY INFORMATION: In FR Doc. 2021–21046 appearing at 86 FR 53642–53644 in the **Federal Register** of Tuesday, September 28 2021, the following corrections are made:

1. On page 53643, in the **SUPPLEMENTARY INFORMATION** section, under the section titled Written Comments, the question ''How does the federal government effectively mitigate supply chain risks?'' is renumbered from Question 3 to Question 4.

2. On page 53643, in the **SUPPLEMENTARY INFORMATION** section, under the section titled Written Comments, the question ''What can the government do differently to better address supply chain risks and vulnerabilities in our major weapon systems/platforms (*e.g.,* PGMs) and critical components (*e.g.,* microelectronics)?'' is renumbered from Question 4 to Question 5.

3. On page 53643, in the **SUPPLEMENTARY INFORMATION** section, under the section titled Written Comments, the question ''What can the government do differently to successfully implement industrial base cybersecurity processes or protocols, attract skilled labor, implement standards, and incentivize the adoption of manufacturing technology?'' is renumbered from Question 5 to Question 6.

Dated: September 30, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–21847 Filed 10–5–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice; Extension of Public Comment Period.

SUMMARY: The National Assessment Governing Board (Governing Board) published a document in the **Federal Register** Volume 86, No. 131, pages 46321–46322 (2 pages) FR Doc. 2021–17676 filed on August 18, 2021, inviting public comment on the Science Assessment Framework for the 2028 National Assessment of Educational Progress (NAEP). Public and private parties and organizations were invited to provide written comments and recommendations relative to the current Science Framework, adopted in 2005. Comments were to be submitted via email to *nagb@ed.gov* with the email subject header NAEP Science Framework no later than 5:00 p.m. Eastern Time on Thursday, September 30, 2021.

The public comment period is hereby extended. Comments shall be submitted to *nagb@ed.gov* no later than 5:00 p.m. Eastern Time on October 15, 2021 with the email subject header NAEP Science Framework.

All responses will be taken into consideration before finalizing the recommendations for updating the NAEP Science Assessment Framework.

Once finalized, recommendations will be used to guide a framework update process, if an update is needed for the 2028 NAEP Science Assessment. Additional information on the Governing Board's work in developing NAEP Frameworks and Specifications can be found at *https://www.nagb.gov/naep-frameworks/frameworksoverview.html.*

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu at (202) 357–6906.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access Department of Education documents published in the **Federal Register** using the search functionality at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley A. Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2021–21857 Filed 10–5–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0071]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Rural, Insular, Native Achievement Programs (RINAP) Progress Update—Outlying Areas and the Republic of Palau

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before November 5, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joanne Osborne, 202–401–1265.

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: Rural, Insular, Native Achievement Programs (RINAP) Progress Update—Outlying Areas and the Republic of Palau.

OMB Control Number: 1810–0757.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 52.

Abstract: The Rural, Insular, and Native Achievement Program (RINAP), within the Office of Elementary and Secondary Education (OESE), part of the U.S. Department of Education (ED), seeks an extension without change from OMB for its progress update protocol for the Outlying Areas and the Republic of Palau. RINAP administers Section 1121 of Title I, Part A of the ESEA; Title II of Public Law 108–118 (Supplemental Education Grant (SEG)), CARES Act—Outlying Areas; Title III of CRRSA—Outlying Areas, Sections 2005 and 11006(2–3) of the ARP; Title V, Part B of the ESEA (Rural Education Achievement Program), Title VI, Part B of the ESEA (Native Hawaiian Education); and Title VI, Part C of the ESEA (Alaska Native Education). Periodic progress updates, phone, virtual, or in-person conversations during a fiscal year with authorized representatives and project directors help ensure grantees are making progress toward meeting program goals and objectives. The information shared with RINAP helps inform the selection and delivery of technical assistance to grantees and aligns structures, processes, and routines so RINAP can monitor the connection between grant administration and intended outcomes.

Dated: October 1, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–21803 Filed 10–5–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open in-person/virtual hybrid meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 10, 2021; 1:00 p.m.–5:00 p.m.

ADDRESSES: This hybrid meeting will be open to the public virtually via WebEx

only. To attend virtually, please contact the NNMCAB Executive Director (below) no later than 5:00 p.m. MDT on Monday, November 8, 2021.

Board members, Department of Energy (DOE) representatives, agency liaisons, and support staff will participate in-person, strictly following COVID–19 precautionary measures, at: Cities of Gold Hotel, 10 Cities of Gold Road, Tribal Room, Santa Fe, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice B. Santistevan, NNMCAB Executive Director, by Phone: (505) 699–0631 or Email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation on Water Quality Data
2. Update on Consent Order Appendix B Milestones and Targets

Public Participation: The in-person/online virtual hybrid meeting is open to the public virtually via WebEx only. Written statements may be filed with the Board no later than 5:00 p.m. MDT on Monday, November 8, 2021, or within seven days after the meeting by sending them to the NNMCAB Executive Director at the aforementioned email address. Oral comments may be given by in-person attendees at 3:00 p.m. MDT and written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make or submit public comments should follow as directed above.

Minutes: Minutes will be available by emailing or calling Menice Santistevan, NNMCAB Executive Director, at *menice.santistevan@em.doe.gov* or at (505) 699–0631.

Signed in Washington, DC, on October 1, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–21812 Filed 10–5–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2963–000]

CLN Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of CLN Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 20, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–21827 Filed 10–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7887–018]

Ashuelot River Hydro, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent To File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 7887–018.

c. *Date Filed:* June 30, 2021.

d. *Submitted By:* Ashuelot River Hydro, Inc. (ARH).

e. *Name of Project:* Minnewawa Hydroelectric Project.

f. *Location:* On Minnewawa Brook in Cheshire County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Robert E. King, Ashuelot River Hydro, Inc., 42 Hurricane Road, Keene, NH 03431; phone at (603) 352–3444; email at *bking31415@gmail.com.*

i. *FERC Contact:* Steve Kartalia at (202) 502–6131; or email at *stephen.kartalia@ferc.gov.*

j. ARH filed its request to use the Traditional Licensing Process on June 30, 2021, and provided public notice of its request on August 21, 2021. In a letter dated September 30, 2021, the Director of the Division of Hydropower Licensing approved ARH's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the

Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. On June 30, 2021, ARH filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD 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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

n. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 7887. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2024.

o. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–21828 Filed 10–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2967–000]

Strategic Energy Capital Fund, LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Strategic Energy Capital Fund, LP's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 20, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–21826 Filed 10–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP21–1151–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Submits tariff filing per 154.203: Operational Purchase and Sale Report 2021 to be effective N/A under RP21–1150.

Filed Date: 09/28/2021.

Accession Number: 20210928–5040.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1164–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates Filing on 9/28/2021 to be effective 10/1/2021.

Filed Date: 9/29/21.

Accession Number: 20210929–5044.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1165–000.

Docket Numbers: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Remove Non-Conforming Agreement (BHSC 215686) to be effective 11/1/2021.

Filed Date: 9/29/21.

Accession Number: 20210929–5045.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1166–000.

Applicants: Mississippi Hub, LLC.

Description: Annual Penalty Disbursement Report of Mississippi Hub, LLC under RP21–1166.

Filed Date: 9/29/21.

Accession Number: 20210929–5062.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1167–000.

Applicants: Enable Gas Transmission, LLC.

Description: Compliance filing: 2021 Annual Report of Penalty Revenue Credits to be effective N/A.

Filed Date: 9/29/21.

Accession Number: 20210929–5076.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1168–000.

Applicants: Enable Gas Transmission, LLC.

Description: Compliance filing: 2021 Annual Report of Linked Firm Service Penalty Revenue Credits to be effective N/A.

Filed Date: 9/29/21.

Accession Number: 20210929–5077.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1169–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Leidy East—Six One Commodities to be effective 10/1/2021.

Filed Date: 9/29/21.

Accession Number: 20210929–5082.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1170–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement (Citadel) to be effective 11/1/2021.

Filed Date: 9/29/21.

Accession Number: 20210929–5085.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1171–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing: Annual Cash-Out Report Period Ending July, 31, 2021 to be effective N/A.

Filed Date: 9/29/21.

Accession Number: 20210929–5102.

Comments Due: 5 p.m. ET 10/12/21.

Docket Numbers: RP21–1172–000.

Applicants: Great Basin Gas Transmission Company.

Description: Tariff Amendment: Cancel 4th revised Tariff Volume No. 1–A to be effective 10/1/2021.

Filed Date: 9/29/21.

Accession Number: 20210929–5142.

Comments Due: 5 p.m. ET 10/12/21.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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: September 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–21825 Filed 10–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–262–000.

Applicants: Nexus Line, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator status of Nexus Line, LLC.

Filed Date: 9/30/21.

Accession Number: 20210930–5079.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: EG21–263–000.

Applicants: Stanly Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Stanly Solar, LLC.

Filed Date: 9/30/21.

Accession Number: 20210930–5101.

Comment Date: 5 p.m. ET 10/21/21.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–106–000.

Applicants: Western Farmers Electric Cooperative, Central Valley Electric Cooperative, Lea County Electric Cooperative, Roosevelt County Electric Cooperative, Farmers Electric Cooperative.

Description: Request For Extension of Partial Waiver of The Commission's PURPA Regulations.

Filed Date: 9/21/21.

Accession Number: 20210921–5139.

Comment Date: 5 p.m. ET 10/12/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1317–002.

Applicants: Arizona Public Service Company.

Description: Compliance filing: Supplement to Amended Compliance Filing in Compliance with Order No. 864 to be effective 1/27/2020.

Filed Date: 9/29/21.

Accession Number: 20210929–5150.

Comment Date: 5 p.m. ET 10/20/21.

Docket Numbers: ER21–955–002.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2021–09–30 Petition for Limited Tariff Waiver & Shortened Comment Period Request to be effective N/A.

Filed Date: 9/30/21.

Accession Number: 20210930–5094.

Comment Date: p.m. ET 10/12/21.

Docket Numbers: ER21–2611–001.

Applicants: Wisconsin Public Service Corporation.

Description: Tariff Amendment: Updated Revised LBAAOCA with WPL to be effective 10/4/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5141.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2624–001.

Applicants: Puget Sound Energy, Inc.

Description: Tariff Amendment: Errata Filing Regarding Effective Date to be effective 8/1/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5110.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2631–001.

Applicants: Wisconsin Power and Light Company.

Description: Tariff Amendment: Amendment to WPL Letter of Concurrence to be effective 10/4/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5006.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2971–000.

Applicants: Northern Indiana Public Service Company LLC.

Description: § 205(d) Rate Filing: Update to Reactive Power Rate Schedule to be effective 10/1/2021.

Filed Date: 9/29/21.

Accession Number: 20210929–5137.

Comment Date: 5 p.m. ET 10/20/21.

Docket Numbers: ER21–2973–000.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Rate Schedule No. 183—Notice of Cancellation to be effective 12/31/2021.

Filed Date: 9/29/21.

Accession Number: 20210929–5143.

Comment Date: 5 p.m. ET 10/20/21.

Docket Numbers: ER21–2974–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3860 Deuel Harvest Wind Energy and WAPA Affected Systems FCA to be effective 11/29/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5007.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2975–000.

Applicants: Continental Electric Cooperative Services, Inc.

Description: Notice of Cancellation of Market Based Rate Tariff of Continental Electric Cooperative Services, Inc.

Filed Date: 9/29/21.

Accession Number: 20210929–5166.

Comment Date: 5 p.m. ET 10/20/21.

Docket Numbers: ER21–2976–000.

Applicants: Evergy Kansas Central, Inc.

Description: § 205(d) Rate Filing: Revision, KEPCo Attach F–1, Cost-Based Full Requirements Agreement to be effective 1/1/2022.

Filed Date: 9/30/21.

Accession Number: 20210930–5083.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2977–000.

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: § 205(d) Rate Filing: Revised FERC Electric Tariff Vol. No. 1 to be effective 10/1/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5084.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2978–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI Submits Revised IA No. 3993 to be effective 11/30/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5093.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2979–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6188; Queue Nos. AD2–172/AE2–035 to be effective 9/1/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5111.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2980–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Balancing Accounts Update 2022 (TRBAA, RSBAA, ECRBAA) to be effective 1/1/2022.

Filed Date: 9/30/21.

Accession Number: 20210930–5122.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2981–000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits one FA re: ILDSA SA No. 1574 to be effective 11/30/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5129.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2982–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Termination of PWRPA Service Agreement Poundstone and Wilkins Slough (SA 30) to be effective 11/30/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5150.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2983–000.

Applicants: Duke Energy Ohio, Inc.

Description: § 205(d) Rate Filing: DEO—CZ Solar IA Rate Schedule 276 to be effective 11/30/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5164.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2984–000.

Applicants: Duke Energy Ohio, Inc.

Description: § 205(d) Rate Filing: DEO—CZ Solar Rate Schedule No. 277 IA to be effective 11/30/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5166.

Comment Date: 5 p.m. ET 10/21/21.

Docket Numbers: ER21–2985–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: October 2021 Membership Filing to be effective 10/1/2021.

Filed Date: 9/30/21.

Accession Number: 20210930–5168.

Comment Date: 5 p.m. ET 10/21/21.

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: September 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–21829 Filed 10–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1888–038]

York Haven Power Company, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Temporary Variance from Flow Requirements.

b. *Project No:* 1888–038.

c. *Date Filed:* September 24, 2021.

d. *Applicant:* York Haven Power Company, LLC (licensee).

e. *Name of Project:* York Haven Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River in Lancaster and York counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jody Smet, Vice President Regulatory Affairs; York Haven Power Company, LLC; P.O. Box 67; 1 Hydro Park Drive; York Haven, PA 17370; Phone: (804) 739–0654.

i. *FERC Contact:* Alicia Burtner, (202) 502–8038, *Alicia.Burtner@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 20, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–1888–038. Comments

emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a temporary variance from the juvenile American shad downstream passage protection flows required by Article 401 of the project license, the Pennsylvania Department of Environmental Protection's Water Quality Certificate (WQC) condition III.B.3.a.i, and the U.S. Fish and Wildlife Service's fishway prescription, section 9.9.6.a.ii. The licensee is required to spill 370 cubic feet per second (cfs) from the forebay sluice gate from 1700 to 2300 hours throughout the downstream juvenile American shad passage period, from October 1 through November 30. These flows are required until a nature-like fishway is completed at the project. The licensee began construction of downstream passage facilities at the forebay sluice gate in July 2021 and had been scheduled to complete construction by September 30, 2021. As a result of Tropical Storm Ida, the licensee could not safely conduct construction activities and had to remove equipment from the river until tailwater elevations abated. Due to these construction delays, the licensee now anticipates completing work by November 15, 2021. The licensee indicates that it would make every effort to complete construction sooner, and that it would release the 370 cfs protection flows from the sluice gate immediately upon being able to safely do so. The licensee would continue to provide downstream flows via its generating units as required by WQC condition III.B.3.1.i and fishway prescription section 9.9.6.a.i. The Pennsylvania Department of Environmental Protection and U.S. Fish and Wildlife Service support the variance request.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 30, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21815 Filed 10–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF21–3–000]

Bonneville Power Administration; Order Approving Rates on An Interim Basis and Providing Opportunity for Additional Comments

1. In this order, we approve Bonneville Power Administration's (Bonneville) proposed fiscal years 2022–2023 wholesale power and transmission rates on an interim basis, pending our further review. We also provide an additional period of time for the parties to file comments.

I. Background

2. On July 30, 2021, as supplemented on August 2, 2021, Bonneville filed a request for interim and final approval of its proposed wholesale power [1] and transmission rates [2] in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) [3] and Subpart B of Part 300 of the Commission's regulations.[4] Bonneville projects that the filed rates will produce average annual power revenues of $2.774 billion and average annual transmission revenues of $1.151 billion. Bonneville asserts that this level of annual revenues is sufficient to recover its costs for the 2022–2023 rate approval period, while providing cash flow to assure at least a 95% probability of making all payments to the United States Treasury in full and on time for each year of the 2022–2023 rate approval period.

3. On August 12, 2021, Bonneville submitted an erratum to its July 30

[1] The proposed wholesale power rates for which Bonneville seeks approval for the fiscal years 2022–2023, which is the period October 1, 2021, through September 30, 2023, are: Priority Firm Power Rate (PF–22); New Resource Firm Power Rate (NR–22); Industrial Firm Power Rate (IP–22); Firm Power and Surplus Products and Services Rate (FPS–22). Bonneville also seeks approval of related General Rates Schedule Provisions for the same period.

[2] The proposed transmission and ancillary services rates (referred to collectively as transmission rates) for which Bonneville seeks approval for the period October 1, 2021, through September 30, 2023, are: Formula Power Transmission Rate (FPT–22.1); Formula Power Transmission Rate (FPT–22.3); Network Integration Rate (NT–22); Point-to-Point Rate (PTP–22); Southern Intertie Rate (IS–22); Montana Intertie Rate (IM–22); Use-of-Facilities Transmission Rate (UFT–22); Advance Funding Rate (AF–22); Townsend-Garrison Transmission Rate (TGT–22); Regional Compliance Enforcement and Regional Coordinator Rates (RC–22); Oversupply Rate (OS–22); Eastern Intertie Rate (IE–22); and Ancillary and Control Area Services Rates (ACS–22). Bonneville also seeks approval of related General Rates Schedule Provisions for the same period.

[3] 16 U.S.C. 839e(i).

[4] 18 CFR 300.10–300.14 (2020).

Filing to correct certain errors in the final documents for the power and transmission rates from the BP–22 rate proceeding (August 12 Erratum). Bonneville asserts that its corrections do not affect its cost recovery under the 2022–2023 rate approval period or the conclusions in its repayment studies. For power rates, Bonneville states that it corrected an error in a summary table in the power rates study. For transmission rates, Bonneville states that it corrected a forecast error that affected the allocation of costs among certain ancillary and control area services rates. Bonneville acknowledges that, although correcting the error has resulted in a change to certain ancillary and control area services rates in its filing, the change has no material impact on the transmission revenue forecast. Bonneville also states that this change in projected revenues has no material impact on Bonneville's recovery of costs during the 2022–2023 rate approval period or on the risk-adjusted expected value of transmission reserves for risk at the end of fiscal years 2022 or 2023.

4. On August 26, 2021, Bonneville submitted an additional erratum (August 26 Erratum) to its July 30 Filing to correct certain errors to loads submitted by Portland General Electric (Portland General) that were used to calculate Portland General's allocation of benefits under the Residential Exchange Program (REP). According to Bonneville, Portland General informed Bonneville on August 12, 2021, that the exchange loads it submitted for calendar year 2020 contained erroneous data. Bonneville reports that the error roughly doubled Portland General's exchange load, resulting in a significant increase in Portland General's REP benefits and a concomitant reduction to other investor-owned utility REP participant benefits and the consumer-owned utility REP participant's benefits. The August 26 Erratum revised power rate schedules, a study, and study documentation to correct those errors.

II. Notice of Filing

5. Notices of Bonneville's July 30, 2021 application and August 2, 2021 supplement were published in the **Federal Register**, 86 FR 43,651 (Aug. 10, 2021); 86 FR 48,132 (Aug. 27, 2021). Protests and motions to intervene were due on or before August 30, 2021, and September 1, 2021, respectively. Timely motions to intervene were filed by Pacific Northwest Generating Cooperative, Avangrid Renewables, LLC, Northwest Requirements Utilities, Public Power Council, Powerex Corp., M–S–R Public Power Agency, and Idaho Conservation League, Great Old Broads for Wilderness, and Idaho Rivers United (collectively, Environmental Parties). Environmental Parties filed a protest opposing the confirmation and approval of Bonneville's proposed power and transmission rates for the 2022–2023 rate period. On September 7, 2021, Bonneville filed a request for leave to answer and an answer to Environmental Parties' protest.

6. Environmental Parties assert that Bonneville has a statutory obligation to protect, mitigate, and enhance fish and wildlife affected by the federal hydropower system,[5] and that Bonneville violated its statutory obligation by underfunding or failing to fund much-needed fish mitigation and enhancement projects.[6] Further, Environmental Parties assert that Bonneville violated the Northwest Power Act and the Administrative Procedure Act by failing to demonstrate ''equitable treatment'' for fish and wildlife in its final rate determination.[7] Finally, Environmental Parties aver that Bonneville is obligated to comply with the Administrative Procedure Act's requirement of reasoned decision-making [8] and that by failing to consider important aspects of the issues before it—namely, Environmental Parties' previous comments during Bonneville's environmental review—Bonneville disregarded this obligation.

7. In response, Bonneville asserts that the protesters' arguments fall outside the Commission's limited jurisdiction over Bonneville's power and transmission rates established by section 7(a)(2) of the Northwest Power Act.[9] Bonneville states that Bonneville's compliance with its environmental review and fish and wildlife protection obligations are outside the scope of section 7(a)(2) and thus are not within the scope of the Commission's review.[10] Bonneville argues that, even though it complied with section 4(h)(11)(A) of the Administrative Procedure Act, the Commission's scope of review is limited to section 7(a)(2) of the Northwest Power Act, which does not extend to Bonneville's obligations under the Administrative Procedure Act.[11]

[5] 16 U.S.C. 839b(h)(11)(A)(i).

[6] Envtl. Parties August 27 Protest at 1.

[7] *Id.* at 2.

[8] *Id.* at 11 (citing *Golden Nw. Aluminum, Inc.* v. *Bonneville Power Admin.,* 501 F.3d 1037, 1045, 1051 (9th Cir. 2007)).

[9] Bonneville September 7 Answer at 3 (citing 16 U.S.C. 839e(a)(2)).

[10] *Id.* at 4 (citing *U.S. Dep't of Energy—Bonneville Power Admin.,* 32 FERC ¶ 61,014 (1985)).

[11] *Id.* at 5–6.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Standard of Review

9. Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2) of the Northwest Power Act: [12]

(A) They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting Bonneville's other costs;

(B) they must be based upon Bonneville's total system costs; and

(C) insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.

10. Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,[13] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Taken together, those statutes require that Bonneville's non-regional, non-firm rates:

(A) Recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(B) encourage the most widespread use of Bonneville power; and

(C) provide the lowest possible rates to consumers consistent with sound business principles.

11. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then

[12] 16 U.S.C. 839e(a)(2). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[13] *Id.* § 839e(k).

submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.[14]

12. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[15] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity in which to raise issues with regard to Bonneville's filing.[16]

13. The Commission declines at this time to grant final confirmation and approval of Bonneville's proposed wholesale power and transmission rates. The Commission's preliminary review nevertheless indicates that Bonneville's wholesale power and transmission rates filing appears to meet the statutory standards and the minimum threshold filing requirements of Part 300 of the Commission's regulations.[17] Moreover, the Commission's preliminary review of Bonneville's submittal indicates that it does not contain any patent deficiencies. The proposed rates therefore will be approved on an interim basis pending full review for final approval. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refund with interest; the Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.[18]

14. In addition, we will provide an additional period of time for parties to file comments and reply comments on issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete and fully developed.

The Commission orders:

(A) Interim approval of Bonneville's proposed wholesale power and transmission rates is hereby granted, to become effective on October 1, 2021, through September 30, 2023, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations,[19] pending final action and either their approval or disapproval.

(B) Within 30 days of the date of this order, parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. Parties who wish to do so may file reply comments within 20 days thereafter.

(C) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Issued: September 30, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–21814 Filed 10–5–21; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10001	NetBank	Alpharetta	GA	10/01/2021
10122	Georgian Bank	Atlanta	GA	10/01/2021
10167	First Federal Bank of California	Los Angeles	CA	10/01/2021
10177	First Regional Bank	Los Angeles	CA	10/01/2021
10228	Frontier Bank	Everett	WA	10/01/2021
10236	Midwest Bank and Trust Company	Elmwood Park	IL	10/01/2021
10302	Hillcrest Bank	Overland Park	KS	10/01/2021
10351	Nevada Commerce Bank	Las Vegas	NV	10/01/2021
10354	Heritage Banking Group	Carthage	MS	10/01/2021
10405	Community Banks of Colorado	Greenwood Village	CO	10/01/2021

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 1, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–21817 Filed 10–5–21; 8:45 am]

BILLING CODE 6714–01–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

[14] *See, e.g., U.S. Dept. of Energy—Bonneville Power Admin.,* 67 FERC ¶ 61,351, at 62,216–17 (1994); *Aluminum Co. of Am.* v. *Bonneville Power Admin.,* 903 F.2d 585, 592–93 (9th Cir. 1989).

[15] *See* 18 CFR 300.10(a)(3)(ii).

[16] *See, e.g., U.S. Dept. of Energy—Bonneville Power Admin.,* 168 FERC ¶ 62,178, at 4 (2019); *U.S. Dept. of Energy—Bonneville Power Admin.,* 160 FERC ¶ 61,113, at P 6 (2017).

[17] *See, e.g., U.S. Dept. of Energy—Bonneville Power Admin.,* 168 FERC ¶ 62,178 at P 4; *U.S. Dept. of Energy—Bonneville Power Admin.,* 160 FERC ¶ 61,113 at P 13.

[18] 18 CFR 300.20(c) (2020).

[19] *Id.*

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 November 5, 2021.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *First State Freemont, Inc., Fremont, Nebraska;* to acquire Two Rivers Bank, Blair, Nebraska.

Board of Governors of the Federal Reserve System, October 1, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–21849 Filed 10–5–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 21, 2021.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of The PNC Financial Services Group, Inc., Pittsburgh, Pennsylvania, and thereby indirectly acquire voting shares of PNC Bank, National Association, Wilmington, Delaware, and BBVA USA, Birmingham, Alabama.

2. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of First Commonwealth Financial Corporation, and thereby indirectly acquire voting shares of First Commonwealth Bank, both of Indiana, Pennsylvania.

B. 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 Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Renasant Corporation, and thereby indirectly acquire voting shares of Renasant Bank, both of Tupelo, Mississippi.

Board of Governors of the Federal Reserve System, October 1, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–21850 Filed 10–5–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

[Docket Number: OP–1613]

New Message Format for the Fedwire® Funds Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adoption of message format and request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is announcing that the Federal Reserve Banks (Reserve Banks) will adopt the ISO® 20022 message format for the Fedwire® Funds Service. The Board is also requesting public comment on a revised plan for migrating the Fedwire Funds Service to the ISO 20022 message format. Specifically, the Board is proposing that the Federal Reserve Banks would adopt the ISO 20022 message format on a single day rather than in three separate phases, as previously proposed. This single-day migration would be targeted for, and would be no earlier than, November 2023. Adopting ISO 20022 for the Fedwire Funds Services is part of a broader set of strategic initiatives to enhance Federal Reserve payment services, including an initiative to potentially expand the operating hours of the Fedwire Funds Service and the National Settlement Service.

DATES: Comments must be received on or before January 4, 2022.

ADDRESSES: You may submit comments, identified by Docket No. OP–1613, 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 in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to 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 personal information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Evan Winerman, Senior Counsel (202–872–7578); or Cody Gaffney, Attorney (202/452–2674), Legal Division; Kristopher Natoli, Manager (202–452–3227); or Amber Latner, Lead Financial Institution Policy Analyst (202/973–6965), Division of Reserve Bank Operations and Payment Systems.

SUPPLEMENTARY INFORMATION:

I. Background

The Fedwire Funds Service is a real-time gross settlement (RTGS) system owned and operated by the Reserve Banks that enables participants to make immediately final payments using their balances held at the Reserve Banks or intraday credit provided by the Reserve Banks. The Fedwire Funds Service and the CHIPS® funds-transfer system, which is owned and operated by The Clearing House Payments Company L.L.C. (TCH), are the main large-value payment systems in the United States.[1]

At present, the Fedwire Funds Service uses a proprietary message format that supports multiple types of communications, including (i) ''value'' messages that order the movement of funds, (ii) ''nonvalue'' messages that do not result in the movement of funds but rather communicate information or requests to other Fedwire Funds Service participants, and (iii) other messages that enable Fedwire Funds Service participants to request account balance information and the processing status of payment orders. The present Fedwire Funds Service message format can be mapped to—and is interoperable with—the CHIPS message format and the message type (MT) format of the SWIFT messaging network.

In 2004, the International Organization for Standardization (ISO)—an independent, non-governmental organization currently comprising 165 national standards bodies—published the ISO 20022 standard, which includes a suite of message format standards for the financial industry, including messages for payments, securities, trade services, debit and credit cards, and foreign exchange. ISO 20022 messages use extensible markup language (XML) syntax, have a common data dictionary that can support end-to-end payment message flow, and include structured data elements that provide for potentially richer payment message data than the current Fedwire Funds Service message format. ISO last reviewed and confirmed the ISO 20022 standard in 2019.

II. Adoption of the ISO 20022 Standard for the Fedwire Funds Service

For the reasons set forth below, the Board is announcing that the Reserve Banks will adopt the ISO 20022 standard for the Fedwire Funds Service. Migrating the Fedwire Funds Service to the ISO 20022 message format will provide a variety of policy and operational benefits and was supported by commenters.

A. Summary of the Board's 2018 Federal Register Notice Relating to the Adoption of the ISO 20022 Standard

On July 5, 2018, the Board published a notice of proposed service enhancement and request for comment (2018 Notice) on a proposal to adopt the ISO 20022 message format for the Fedwire Funds Service.[2] The 2018 Notice more fully described the current Fedwire Funds Service message format and the ISO 20022 message format, including tables that compared the two formats with respect to various message elements. In addition, the 2018 Notice described payments industry efforts related to ISO 20022, including outreach by the Reserve Banks and coordination efforts between the Reserve Banks, TCH, and other stakeholders.

The 2018 Notice further described the potential benefits of adopting the ISO 20022 message format for the Fedwire Funds Service. In particular, the Board highlighted potential benefits, including increased efficiency due to greater interoperability among global payment systems and types of payments, richer data that could improve anti-money laundering and sanctions screening, and broader adoption of extended remittance information (ERI).[3]

B. Public Comments Relating to the Adoption of the ISO 20022 Standard

The 2018 Notice included a request for comment on the potential benefits and drawbacks of adopting the ISO 20022 standard. The 60-day comment period ended on September 4, 2018. The Board received 17 comments from a range of industry stakeholders, including depository institutions, credit unions, industry associations, software vendors, and other market infrastructure operators.

The commenters all supported the proposal to adopt ISO 20022. Commenters who expressed a view on the benefits of adopting ISO 20022 generally agreed that ISO 20022 would produce the benefits that the Board identified in the 2018 Notice. Commenters also identified other potential benefits, including the possibility that adopting ISO 20022 as a global standard could increase competition in the payment ecosystem by reducing the cost of entry for payment processors and new market infrastructures.

The 2018 Notice also requested comment on the impact on Fedwire Funds Service participants and service providers of adopting the ISO 20022 standard. Commenters generally agreed that, as described in the 2018 Notice, the costs of implementation for a particular participant would vary depending on how that participant accesses the Fedwire Funds Service. In particular, Fedwire Funds Service participants that access the Fedwire Funds Service through solutions that require participants to develop their own software (or rely on software from vendors) will incur greater costs than participants that access the Fedwire Funds Service telephonically or through a Reserve Bank website in which payments are entered manually. A commenter noted that implementation costs incurred by a vendor may ultimately be passed on to a participant's customers.

One commenter expressed concern that the proposal could impose significant burdens on corporate end users. This commenter argued that corporate end users should be permitted to (i) maintain their current internal payment applications and (ii) rely on financial institutions and service

[1] In 2020, the Fedwire Funds Service processed approximately 184 million payments with a total value of approximately $840 trillion, and CHIPS processed approximately 117 million payments with a total value of approximately $419 trillion. *See https://www.theclearinghouse.org/media/new/tch/documents/payment-systems/chips-volume-and-value.pdf.*

[2] 83 FR 31391 (July 5, 2018).

[3] ERI generally refers to details in the payment message regarding the purpose of a business-to-business payment. For example, a business that sends a payment to a vendor could include details regarding the invoices against which the vendor should apply the payment.

providers to translate payment messages into ISO 20022 format. Relatedly, another commenter expressed concern that the proposal lacks guidelines concerning ''user to bank'' messages (*i.e.,* messages between depository institutions and their customers). The Reserve Banks' ISO 20022 implementation will establish guidelines for messages only between the Reserve Banks and direct Fedwire Funds Service participants (generally depository institutions). Accordingly, each Fedwire Funds Service participant will need to determine how to exchange messages with its customers. The Board notes that the ISO 20022 suite of payment messages includes a number of customer-to-bank messages and that Fedwire Funds Service participants could use these messages in their interfaces with their customers, which would eliminate the need to translate end users' payment message into ISO 20022 format.[4] Similarly, as the Board noted in the 2018 Notice, Fedwire Funds Service participants will need to determine, consistent with any legal obligations, how to handle enhanced data that they receive, including whether (and how) to provide such data to the next receiving bank in the funds transfer or to the beneficiary. The Board acknowledges that transitioning to the ISO 20022 message format may impose some transition costs on Fedwire Funds Service participants and corporate end-users, but believes the benefits of adoption, as discussed elsewhere in this notice, significantly outweigh these costs.

In addition to discussing the adoption of the ISO 20022 standard and its impact on participants and service providers, commenters provided feedback regarding the functionality of ISO 20022, suggesting that (among other things) the Reserve Banks should expand the range of data that Fedwire Funds Service participants will be able to include in payment orders. One commenter suggested, for example, that the Reserve Banks should implement ISO 20022 in a manner that allows a sender to identify all persons that relate to the transaction for which the funds transfer is being made (*i.e.,* not just the parties included in the payment portion of the transaction). The same commenter expressed concern that the proposal would implement ISO 20022 in a manner that matches, but does not improve upon, the current Fedwire Funds Service message format.

Once the Reserve Banks fully implement ISO 20022, Fedwire Funds Service participants will be able to send and receive ISO 20022 messages that contain additional and more detailed data than currently available in the Fedwire Funds Service message format, including many of the functionalities suggested by commenters. The Board believes these enhanced data elements represent an improvement on the current Fedwire Funds Service message format. New data fields in ISO 20022 messages will include:

- New data elements for additional persons or entities identified in payment messages (*i.e.,* initiating party, two additional previous instructing agents, two additional intermediary agents, ultimate debtor, ultimate creditor)
- New purpose code data element to help explain the business purpose of the funds transfer
- New data element to provide information about a bilateral processing agreement
- Longer lengths for certain elements (*e.g.,* the name element can be up to 140 characters)
- Structured postal address data elements, including a country code
- Explicit data element to include a Legal Entity Identifier for all legal entities in the funds transfer
- New regulatory reporting data elements to provide regulatory information (*e.g.,* OFAC license) related to customer transfers

The Board notes that the Reserve Banks sought input from the Format Advisory Group [5] on whether the Reserve Banks' adoption of the ISO 20022 standard should also include the ISO 20022 stand-alone remittance message (remt.001),[6] but the Format Advisory Group indicated that there is currently no business case for the Fedwire Funds Service to support that message.

A commenter requested that Fedwire Funds Service participants sending cross-border funds transfers be required to complete a country code in the address component for the beneficiary. The Reserve Banks will require the country code for the originator and beneficiary elements when the structured format address option is used for domestic or cross-border funds transfers.

One commenter suggested that the Reserve Banks should implement ISO 20022 in a way that better supports the inclusion of ERI. This commenter asserted that the Reserve Banks should increase the size permitted for the structured or unstructured elements for ERI, emphasizing that it would be problematic for ERI elements to impose size limitations. The Reserve Banks plan to support up to 140 characters for unstructured remittance information and up to 9,000 characters for structured ERI in accordance with the High Value Payment Systems Plus (HVPS+) Group guidelines,[7] which promote straight-through processing by reducing the use of unstructured ''free text'' data and encouraging the use of structured data. The Reserve Banks will reassess the business case for providing more than 9,000 characters for structured ERI if actual usage by Fedwire Funds Service participants increases over time.

A commenter suggested that the Reserve Banks consider including expanded character sets (*e.g.,* Chinese characters) in the ISO 20022 implementation for the Fedwire Funds Service. During the planning phase for the ISO 20022 migration, the Reserve Banks consulted with the Format Advisory Group to determine whether to expand the character sets for the Fedwire Funds Service. The Format Advisory Group recommended that the Reserve Banks defer any decision to expand character sets, noting that (i) the level of demand for expanded character sets is uncertain and (ii) expanding character sets would be a significant change that would impact other participant applications that interface with participants' payment applications. In light of the uncertain demand, the ISO 20022 implementation for the Fedwire Funds Service will not include additional character sets at this time but

[4] For example, a corporate customer could send a payment order to its bank using the Customer Credit Transfer Initiation (pain.001) message and could request a reversal of a payment using the Customer Payment Reversal (pain.007) message. For additional ISO 20022 payment messages, *see https://www.iso20022.org/payments_messages.page.* The Board has learned that several Fedwire Funds Service participants already receive ISO 20022 messages from their corporate customers and translate those messages into the current proprietary Fedwire Funds Service format.

[5] The Format Advisory Group is jointly chaired by the Federal Reserve Bank of New York and TCH and includes 18 global and regional banks. Seventeen institutions are Fedwire Funds Service participants, 10 of which are also CHIPS participants. One institution is a participant in CHIPS only.

[6] The ISO 20022 remt.001 message is a standalone nonvalue message that includes the remittance details related to a payment (*e.g.,* invoice details). This message includes a reference to the value message so that the receiver can reconcile the remt.001 message to the value message (*e.g.,* pacs.008).

[7] The HVPS+ Group was convened by SWIFT in early 2016 to develop a set of guidelines for ISO 20022 messages used by high-value payment systems around the world. The Reserve Banks and TCH have participated in the HVPS+ Group, and they have based their ISO 20022 implementation plans for the Fedwire Funds Service and CHIPS, respectively, on the HVPS+ Group guidelines.

may consider including additional character sets in the future.

Another commenter noted that the proposal lacks specifications to support an application program interface (API) to the proposed ISO 20022 messages. An API would allow a Fedwire Funds Service participant to request certain information from the Fedwire Funds Service according to a specific set of instructions (*e.g.,* instructions to request an account balance). Incorporating APIs into the Fedwire Funds Service ISO 20022 initiative would increase the scope of the project and extend the migration timeline. Thus, APIs are outside the scope of the current ISO 20022 implementation plan but would be considered as a future enhancement.

A few commenters raised more general issues related to the adoption of the ISO 20022 standard. One commenter suggested that the Board work to ensure that ISO 20022 does not disrupt the U.S. legal framework for wire transfers. As the Board noted in the 2018 Notice, ISO 20022 employs terminology that differs in key respects from that used in U.S. funds-transfer law, including Article 4A of the Uniform Commercial Code (UCC) and subpart B of the Board's Regulation J.[8] The Board amended subpart B of Regulation J and related commentary to clarify that terms used in financial messaging standards, such as ISO 20022, do not confer or connote legal status or responsibilities.[9] TCH also indicated in its comment letter that it would include similar clarifications in the CHIPS rules. As a result, the Board does not anticipate that the adoption of ISO 20022 will disrupt the U.S. legal framework for wire transfers.

Finally, a commenter recommended that the Federal Reserve increase its efforts to educate the financial industry and corporate end-users regarding ISO 20022, expressing concern that small entities in particular do not understand ISO 20022. As the proposal described in detail, the Reserve Banks have engaged in extensive public outreach regarding ISO 20022 by presenting at industry conferences; publishing webinars; establishing websites to educate the public about ISO 20022; establishing advisory groups that include banks, service providers, software vendors, and other stakeholders to provide input on how to implement ISO 20022 for the Fedwire Funds Service; and hosting in-person workshops to provide detailed explanations of each phase of the ISO 20022 implementation plan. The Reserve Banks will publish additional webinars and hold additional in-person workshops before the Fedwire Funds Service migrates to ISO 20022.

III. Proposed New Implementation Strategy for the ISO 20022 Standard

A. Summary of 2018 Notice Relating to Implementation Strategy

The 2018 Notice proposed that the Reserve Banks would transition from the current Fedwire Funds Service message format to ISO 20022 in three phases. In phase 1, the Reserve Banks would make certain changes to the current Fedwire Funds Service message format to address existing interoperability gaps with SWIFT's proprietary message format. Phase 1 would be targeted for completion by November 23, 2020. In phase 2, the Reserve Banks would migrate Fedwire Funds Service participants in waves to send and receive ISO 20022 messages that have elements and character lengths that are comparable to the current Fedwire Funds Service message format. In addition to this ''like-for-like'' implementation, the Reserve Banks would also require Fedwire Funds Services participants during phase 2 to test their ability to receive full ISO 20022 messages to prepare for full implementation of the ISO 20022 standard. Phase 2 would be targeted for completion from March 2022 to August 2023. In phase 3, the Reserve Banks would fully implement ISO 20022 by enabling Fedwire Funds Service participants to send ISO 20022 messages that contain enhanced data. Phase 3 would be targeted for completion by November 2023.

B. Public Comments Relating to Three-Phased Implementation Strategy

Some of the 17 comments the Board received on the 2018 Notice addressed the proposed three-phased implementation strategy for the ISO 20022 standard. For example, one commenter suggested that phases 1, 2, and 3 of the Fedwire Funds Service's transition to ISO 20022 could be combined or shortened in various ways. The commenter stated that combining phases 1 and 2 would allow users with an urgent need to adopt ISO 20022 to do so sooner. The commenter alternatively suggested that the Reserve Banks could combine phases 2 and 3, arguing that Fedwire Funds Service participants would be able to mitigate resulting risks because they would only be required to receive enhanced data in phase 3. As described below, the Board is proposing a revised, single-day implementation strategy in lieu of the three-phased strategy that was originally proposed. Additional comments received in response to the 2018 Notice are discussed in connection with various implementation-related issues described below.

C. Developments Since the 2018 Notice

In September 2019, the Reserve Banks announced a pause in their plans for the three-phased migration to the ISO 20022 messaging standard in response to a formal request from the Payments Market Practice Group (PMPG) to instead consider a single-day implementation.[10] Specifically, the PMPG asked the Reserve Banks and other large-value payment system operators around the world to adopt a common approach to implementing fully enhanced ISO 20022 messages to reduce the risk and duration of cross-border interoperability issues. The PMPG noted that there would be a high degree of readiness within the cross-border payments industry for a single-day implementation of ISO 20022 as a result of industry investments in response to SWIFT's and Eurozone RTGS operators' ISO 20022 migration schedules.[11] In addition, the PMPG raised concerns about the potential operational risks introduced by certain aspects of the phased implementation approach, such as the need to truncate ISO 20022 message details. Finally, the PMPG suggested that the elimination of a like-for-like phase in a phased implementation approach would simplify implementation requirements for both operators and payment system participants, create a more consistent global operating model, and result in faster industry adoption of the ISO 20022 message standard.[12]

Since the September 2019 announcement, the Reserve Banks have

[8] 12 CFR part 210. Subpart B of Regulation J, which governs funds transfers through the Fedwire Funds Service, generally incorporates UCC Article 4A.

[9] 12 CFR 210.25(e).

[10] *See https://www.frbservices.org/news/press-releases/092319-fedwire-funds-migration-iso20022-messages.html.* The PMPG is an independent advisory group of payments experts that reports to the Banking and Payments Committee of SWIFT's Board of Directors. PMPG members represent global financial institution from Asia Pacific, Europe, and North America.

[11] At the time, SWIFT, Eurosytem's TARGET2, and EBA Clearing's EURO1/STEP1 expected to complete their migrations to ISO 20022 by November 2021, although they now expect to complete their migrations in November 2022.

[12] Subsequent to the PMPG request, Payments Canada announced that beginning November 2022, it will implement a new closed user group for Lynx participants to exchange ISO 20022 payment messages to support cross-border interoperability and begin the Lynx migration from SWIFT MT messages to ISO 20022 messages for all Canadian wire transfer payments. Additionally, the Bank of England announced it expects to complete its migration to fully enhanced ISO 20022 messages for the CHAPS system in February 2023.

been exploring a revised ISO 20022 implementation strategy that would support a single-day implementation of fully enhanced ISO 20022 messages. In doing so, the Reserve Banks have engaged with industry through the Format Advisory Group. In addition to discussing a potential single-day implementation strategy for the Fedwire Funds Service, these discussions have considered the potential cross-border interoperability issues that could arise if the Reserve Banks and other large-value payment system operators do not implement the ISO 20022 messaging standard by the time SWIFT enables its participants to send ISO 20022 messages over its global network in 2022.

Based on this industry engagement, the Board is now proposing, and seeking comment on, a single-day implementation strategy to migrate the Fedwire Funds Service to the ISO 20022 messaging standard.

D. Revised Proposal for Migrating the Fedwire Funds Service to the ISO 20022 Standard on a Single Day

The Board is proposing that the Reserve Banks adopt the ISO 20022 message format on a single day rather than in three separate phases, as previously proposed. As of the implementation date (*i.e.,* the date on which the Fedwire Funds Service is scheduled to migrate to ISO 20022), all Fedwire Funds Service participants would be required to be able to send and receive fully enhanced ISO 20022 messages and the proprietary message format for the Fedwire Funds Service would no longer be supported. The implementation date would be targeted for, and would be no earlier than, November 2023.

The Board considered various issues in connection with the proposed single-day implementation of ISO 20022 which are outlined in the sections below.

1. Interoperability With Other Payment and Messaging Systems

In connection with the 2018 Notice, various commenters suggested that the Reserve Banks should coordinate the implementation of ISO 20022 with CHIPS and SWIFT to ensure that the three systems remain interoperable. Two commenters also suggested that Nacha adopt ISO 20022 for automated clearing house (ACH) payments.[13]

a. Alignment With CHIPS

Five commenters suggested that the Reserve Banks and TCH should align implementation of ISO 20022 for the Fedwire Funds Service and CHIPS.[14] As described in the 2018 Notice, the Reserve Banks and TCH independently decided to pursue implementation of ISO 20022. The Federal Reserve intends to align the timing of ISO 20022 implementation for the Fedwire Funds Service with that of CHIPS to the extent possible to maximize benefits for Federal Reserve customers that also use CHIPS. In March 2021, TCH announced its intention to adopt the ISO 20022 message format for the CHIPS system on a single day in November 2023.

b. Alignment With SWIFT

In December 2018, SWIFT announced that it would migrate to ISO 20022 for payments and cash reporting statements beginning in 2021. SWIFT subsequently postponed the migration to November 2022.[15] Under the SWIFT plan, beginning in November 2022, SWIFT will allow users to send either the SWIFT MT format or ISO 20022 messages, but will require all SWIFT users to receive ISO 20022 messages. For a SWIFT receiver that has not yet migrated its internal processing systems to support ISO 20022 messages, however, SWIFT will deliver to the receiver both an ISO 20022 message and a SWIFT MT message that the SWIFT receiver can use for internal processing.

The Board recognizes that financial institutions may face cross-border interoperability issues if SWIFT users migrate to ISO 20022 before the Reserve Banks implement ISO 20022. Specifically, in November 2022, when SWIFT users begin receiving ISO 20022 messages that need to be settled via the Fedwire Funds Service, the users will need to map the ISO 20022 data elements to the current proprietary Fedwire Funds Service message format. However, the ISO 20022 message may contain new data elements or have longer character lengths that are not supported in the current proprietary message format of the Fedwire Funds Service. To reduce the risk of data truncation, the Reserve Banks, in cooperation with global banks, have developed a market practice to ensure all ISO 20022 data can be carried in the Fedwire Funds Service message format. Specifically, in November 2022, the Reserve Banks will make minor changes to an existing 9,000-character field within the current Fedwire Funds Service message format to create sufficient space to include the full text of data-rich ISO 20022 messages.[16] The market practice, combined with Fedwire Funds Service message format changes in November 2022, will reduce the risk of cross-border interoperability issues during the period between SWIFT's implementation of ISO 20022 and the Fedwire Funds Service's implementation of ISO 20022.

c. Adoption of ISO 20022 for Instant Payments

ISO 20022 is being implemented globally as messaging standard for real-time retail payment systems. The standard is used for TCH's Real Time Payments Network and will be used for the Federal Reserve's FedNow℠ Service, which is targeted for implementation in 2023. The Reserve Banks are applying a holistic approach to implementing ISO 20022 across the different payment systems they operate by implementing ISO 20022 consistent with the global standard and defined best practices. The Reserve Banks will align the implementation of ISO 20022 for the FedNow Service and the Fedwire Funds Service to the greatest extent possible, but where there are differences in functionality between the services, there will be different ISO 20022 messages. For example, to eliminate the need for Fedwire Funds Service participants to receive new types of payment messages, the Fedwire Funds Service will not adopt a request for information feature planned for the FedNow Service. Furthermore, the Reserve Banks have collaborated with TCH to optimize compatibility of the ISO 20022 messages for the two U.S. instant payment services and the two U.S. high-value payment services to benefit common users across the industry.

d. Adoption of ISO 20022 for ACH payments

Two commenters requested that the Board work with Nacha to ensure that ACH payments also migrate to ISO 20022. The Board notes that Nacha and the ACH operators (*i.e.,* the Reserve Banks and TCH) have not yet determined whether they will adopt the ISO 20022 message format for the ACH

[13] Nacha, whose membership consists of insured financial institutions and regional payment associations, establishes network-wide ACH rules through its Operating Rules & Guidelines.

[14] Two of these commenters also suggested that the Reserve Banks and TCH should implement ISO 20022 in a manner that aligns with the recommendations of the High Value Payment Systems Plus (HVPS+) Group.

[15] For the announcement of SWIFT's November 2022 migration date, *see https://www.swift.com/standards/iso-20022/iso-20022-programme/timeline.*

[16] TCH plans to implement a similar change to the CHIPS system in November 2022.

system. However, Nacha has developed an ISO 20022 Mapping Guide and Tool to help financial institutions translate ISO 20022 messages into the existing ACH format.[17]

e. Consolidated List of Industry Initiatives

A consolidated list of the industry initiatives mentioned above is noted below. Fedwire Funds Service participants that also participate in SWIFT and the high-value payment systems noted below and those that plan to participate in the FedNow Service will also need to prepare for these initiatives.

Target date	Description
November 2022	▪ SWIFT will allow its users to begin sending ISO 20022 messages and will require users to receive ISO 20022 messages. ▪ The Eurosystem and EBA Clearing will migrate to ISO 20022 messages for the TARGET2 system and EURO1/STEP1 system respectively on a single day. ▪ Payments Canada announced that it will implement a new closed user group for Lynx participants to exchange ISO 20022 payment messages to support cross-border interoperability, and begin the Lynx migration from SWIFT MT messages to ISO 20022 messages for all Canadian wire transfer payments. ▪ The Reserve Banks and TCH will implement changes to the proprietary message formats for the Fedwire Funds Service and the CHIPS system respectively to support ISO 20022 cross-border interoperability.
February 2023	▪ The Bank of England is expected to migrate to fully enhanced ISO 20022 messages for the CHAPS system.
2023 (exact date to be announced later).	▪ The Reserve Banks expect to launch the FedNow Service, which will support ISO 20022 messages.
November 2023	▪ TCH is expected to implement ISO 20022 messages for the CHIPS system on a single day.
November 2023 or later	▪ The Reserve Banks are proposing to implement ISO 20022 messages for the Fedwire Funds Service on a single day.

2. Message Format Documentation

The Reserve Banks are using a restricted page on SWIFT's MyStandards web-based application as a tool to store and share documentation related to the ISO 20022 project with authorized Fedwire Funds Service participants and software vendors.[18] The Reserve Banks will publish the final message format documents for the fully enhanced ISO 20022 messages after the Board announces a final implementation strategy. Within the MyStandards application, Fedwire Funds Service participants and software vendors will be able to compare the ISO 20022 specifications for the Fedwire Funds Service with the ISO 20022 specifications for other payment systems to which they have access, including the specifications for the FedNow Service.

In response to the 2018 Notice, a commenter suggested that using MyStandards could reduce competition for documentation-related services and could be perceived as giving an unfair advantage to SWIFT, the vendor of MyStandards. The Reserve Banks selected MyStandards to maximize efficiency for the Reserve Banks and their customers, some of which already use MyStandards for their own business needs or as participants in other retail and large-value payment systems.[19] The Reserve Banks provide access to MyStandards free of charge.

The same commenter also asserted that software vendors should be given direct access to the MyStandards service rather than gaining access via a Fedwire Funds Service participant, arguing that direct access would foster competition. Due to concerns about the sensitivity of the information that might be stored in the MyStandards service, the Reserve Banks will allow only Fedwire Funds Service participants, software vendors, and service providers to access Fedwire Funds Service documentation in the MyStandards service.[20] The Reserve Banks have sent communications to Fedwire Funds Service participants to obtain contact information for software vendors so that the Reserve Banks can contact those vendors directly. In addition, the Reserve Banks have sent communications to known software vendors to provide them with direct access to the documentation in the MyStandards service.

3. Message Format Testing

To reduce the risks associated with a single-day implementation of the ISO 20022 messages for the Fedwire Funds Service, the Reserve Banks would require rigorous testing in three different environments. Specifically, the Reserve Banks would enable authorized Fedwire Funds Service participants and software vendors to use the Readiness Portal feature within MyStandards to ensure that their ISO 20022 messages conform to Fedwire Funds Service requirements. For example, the Readiness Portal testing would help participants ensure that their ISO 20022 messages are properly formatted (*e.g.,* include mandatory data elements, adhere to required element lengths, use valid codes, and contain valid characters). The Readiness Portal would provide participants and software vendors an opportunity to perform advance testing of their ISO 20022 messages and address any issues with their ISO 20022 messages before performing functionality testing with the Fedwire Funds Service in the Reserve Banks' depository institution testing (DIT) environment and production environment.[21]

[17] *See https://www.nacha.org/content/iso-20022-mapping-guide-tool.*

[18] For more information on MyStandards, *see https://www.swift.com/our-solutions/compliance-and-shared-services/mystandards.*

[19] In March 2021, the Reserve Banks published the ISO 20022 specifications for the FedNow Service on SWIFT's MyStandards web-based application tool. The European Central Bank, EBA Clearing, Bank of England, Payments Canada, and The Clearing House use MyStandards to maintain their ISO 20022 message format documentation.

[20] The Reserve Banks have posted on a Reserve Bank website a list of software vendors that Fedwire Funds Service participants have identified as needing access to Fedwire Funds Service message documentation. *See https://www.frbservices.org/resources/financial-services/wires/software-vendors.html.*

[21] For more information on the DIT environment, *see https://www.frbservices.org/financial-services/wires/testing/di-testing.html.* For more information on the production environment, *see https://www.frbservices.org/financial-services/wires/testing/production-test.html.*

The Reserve Banks would introduce a second DIT environment nine to twelve months ahead of the implementation date to provide participants a dedicated environment for testing ISO 20022.[22] The Reserve Banks would also provide opportunities for participants to conduct coordinating testing in the second DIT environment so that they can test their ability to send and receive ISO 20022 messages among each other. Further, the Reserve Banks would provide opportunities for participants to test their ISO 20022 messages in the production environment on select Saturdays about two to three months prior to the implementation date.

Finally, the Reserve Banks would require certain customers and service providers to complete a separate test script in each of the testing environments, including the MyStandards Readiness Portal, the second DIT environment, and the production environment.[23] The advance testing in the MyStandards Readiness Portal should reduce the amount of time needed to successfully complete the test script in the second DIT and production environments.

The Reserve Banks would publish a final testing plan including the testing requirements for each testing environment after the Board announces a final implementation strategy.

4. Temporary Backout Strategy Before the Migration to ISO 20022

If the Reserve Banks encounter significant problems activating ISO 20022 on the Saturday before the implementation date, the Reserve Banks would have the ability to ''back out'' the ISO 20022 changes and return to the legacy format temporarily. Fedwire Funds Service participants would need to attest to their ability to back out their ISO 20022 changes when they conduct their production testing.

The backout strategy would only apply if the Reserve Banks encounter a significant issue when activating the ISO 20022 changes before the implementation date. The Reserve Banks would not invoke the backout strategy if a Fedwire Funds Service participant experiences an issue with an internal application. Rather, a participant would be able to use the FedPayments® Manager—Funds application via the FedLine Advantage® solution as a contingency alternative if it encounters an issue with an internal payment application that cannot be fixed before the implementation date.

5. Strategy for Addressing Technical Problems After the Migration to ISO 20022

If the Reserve Banks encounter a significant issue on or after the implementation date, the Reserve Banks would not be able to return to the legacy format. Rather, the Reserve Banks would invoke a ''fix-in-place'' strategy to address the issue. Such a fix-in-place strategy would require the Reserve Banks to implement a software update to address any issue as soon as the fix had been identified and fully tested. This strategy is consistent with previous customer-facing initiatives, and the Reserve Banks believe it would reduce complexity and costs associated with the ISO 20022 initiative because the Reserve Banks and Fedwire Funds Service participants would not need to retain the ability to support both the new ISO 20022 format and the current proprietary message format.

IV. Implementation of ISO 20022 and Expanded Operating Hours for the Fedwire Funds Service and the National Settlement Service

The proposed adoption of ISO 20022 for the Fedwire Funds Service should be viewed as part of a broader set of initiatives to expand and enhance Federal Reserve payment services, including the development and launch of the FedNow Service and the potential expansion of operating hours for the Fedwire Funds Service and the National Settlement Service (NSS).[24] The Board recognizes that these initiatives have implications for the financial services industry, potentially necessitating changes to operational processes and technology while also creating new business and service opportunities. This notice reflects the Board's view that the migration to ISO 20022 should proceed in line with the global migration to ISO 20022.

Regarding expanding the operating hours of the Fedwire Funds Service and the NSS, the Board is actively considering the risk, operational, and policy implications of expanding the operating hours of those services up to 24x7x365 and is analyzing potential operational options, particularly as the Reserve Banks develop and prepare to launch the FedNow Service.[25] In considering a potential expansion of operating hours, the Federal Reserve is committed to proposing a path that supports a safe, efficient, and resilient payment system and sets a strong foundation for the future in light of the increasingly round-the-clock nature of commerce and financial market activity in a global economy.[26] The Board expects to issue a separate **Federal Register** notice in the next year to seek input on a proposal to expand Fedwire Funds Service and NSS operating hours up to 24x7x365.

V. Request for Comment

The Board requests public comment on all aspects of its proposal to migrate the Fedwire Funds Service to the ISO 20022 message format on a single day, as described in this notice, rather than in three separate implementation phases as proposed in the 2018 Notice. In particular, the Board requests comment on the following questions:

1. Do you support the single-day implementation strategy? If not, what implementation strategy would be optimal?

2. Should the Reserve Banks implement ISO 20022 for the Fedwire Funds Service in November 2023? If not, what would be your preferred implementation date? Please provide the rationale behind your preference.

3. Should the Reserve Banks and TCH implement ISO 20022 for the Fedwire Funds Service and CHIPS on the same day?

4. Do you have any resource constraints or other challenges that would impact your ability to prepare for the implementation of ISO 20022 for the Fedwire Funds Service? (For example, some Fedwire Funds Service participants and software vendors may also be preparing for the ISO 20022 implementations for SWIFT and other payment system operators, which begin in November 2022, and the Reserve

[22] The current DIT environment will remain until the ISO 20022 implementation date to allow participants to test with the current proprietary message format for the Fedwire Funds Service.

[23] This requirement would apply to all customers and service providers that have their own FedLine Direct® connection to the Fedwire Funds Service; customers that import 20 or more transactions per day using the FedPayments Manager—Funds application via the FedLine Advantage® solution; and select customers that enter messages directly into the FedPayments Manager—Funds application screens.

[24] Recent enhancements to Federal Reserve payment services include the expansion of Fedwire Funds Service and NSS operating hours, effective March 8, 2021, to support an additional settlement window for same-day automated clearinghouse (ACH) payments. 84 FR 71940 (Dec. 30, 2019).

[25] As originally announced by the Board in 2019, the Federal Reserve has been exploring an expansion of Fedwire Funds Service and NSS operating hours, up to 24x7x365, to support a wide range of payment activities, including liquidity management in private-sector RTGS services for instant payments. See 84 FR 39297 (Aug. 9, 2019).

[26] Consistent with these considerations, past and recent industry input have supported 24x7x365 operations as a potentially important target for the Fedwire Funds Service and the NSS. See *Payments Risk Committee: Fedwire Expanded Hours Whitepaper,* available at *https://www.newyorkfed.org/medialibrary/microsites/prc/files/2021/prc-fedwire-expanded-hours-considerations-white-paper.*

Banks' launch of the FedNow Service in 2023.)

5. Do you have any concerns about the Reserve Banks' proposed testing strategy and requirements?

6. How much time would you need to test your ISO 20022 messages in the MyStandards Readiness Portal before testing in the new second DIT environment?

7. Would nine months of testing ISO 20022 messages in the new second DIT environment be sufficient? If not, what is the minimum amount of testing you would require in the second DIT environment before the ISO 20022 implementation date?

8. Do you have any concerns about (i) proposed backout strategy for the ISO 20022 changes on the Saturday before the implementation date or (ii) the proposed fix-in-place strategy after on or after the implementation date?

VI. Competitive Impact Analysis

The Board conducts a competitive impact analysis when it considers a rule or policy change that may have a substantial effect on payment system participants. Specifically, the Board determines whether there would be a direct or material adverse effect on the ability of other service providers to compete with the Federal Reserve due to differing legal powers or due to the Federal Reserve's dominant market position deriving from such legal differences.[27]

The Board explained in the 2018 Notice that it does not believe that adopting ISO 20022 for the Fedwire Funds Service would have an adverse impact on other service providers. The current proprietary message format for the Fedwire Funds Service is interoperable with the proprietary message format for the CHIPS system. The Reserve Banks have worked with TCH on plans to align ISO 20022 implementation for the Fedwire Funds Service and CHIPS where possible and will continue to do so; the Reserve Banks and TCH have previously indicated that such coordination will benefit their common customers.

TCH submitted a comment on the 2018 Notice in which it agreed that adopting ISO 20022 for the Fedwire Funds Service will not have an adverse effect on TCH's ability to compete with the Fedwire Funds Service assuming that there are no significant differences in (i) how the applicable legal frameworks for CHIPS and the Fedwire Funds Service address the legal issues created by the adoption of ISO 20022 and (ii) the regulatory and compliance expectations for CHIPS and Fedwire Funds Service payments. As described above, the Board has amended Regulation J to ensure that adopting ISO 20022 does not affect the legal framework for Fedwire Funds Service payments. TCH also indicated in its comment letter that it would include similar clarifications in the CHIPS rules. Given that the Reserve Banks and TCH plan to continue collaborating on their respective ISO 20022 plans for the Fedwire Funds Service and CHIPS, the Board does not believe that implementing ISO 20022 will result in different regulatory or compliance expectations for CHIPS funds transfers relative to Fedwire Funds Service funds transfers.

[27] *See http://www.federalreserve.gov/paymentsystems/pfs_frpaysys.htm.*

By order of the Board of Governors of the Federal Reserve System, September 30, 2021.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2021–21801 Filed 10–5–21; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its Alternative Fuels Rule (''Rule''). That clearance expires on March 31, 2022.

DATES: Comments must be submitted on or before December 6, 2021.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Comment: FTC File No. P134200'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title of Collection: Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (''Alternative Fuels Rule''), 16 CFR part 309.

OMB Control Number: 3084–0094.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 6,000 hours.

Estimated Annual Labor Costs: $175,298.

Non-Labor Costs: $3,040.

Abstract

The Energy Policy Act of 1992 established federal programs to encourage the development of alternative fuels and alternative fueled vehicles (''AFVs''). Section 406(a) of the Act directed the Commission to establish uniform labeling requirements for alternative fuels and AFVs. 42 U.S.C. 13232(a). Such labels must provide ''appropriate information with respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons.'' The required labels must be ''simple and, where appropriate, consolidated with other labels providing information to the consumer.''

Pursuant to the Act, the Commission published the Alternative Fuels Rule in 1995, and the Rule was later amended in 2013.[1] The Rule requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels. To ensure the accuracy of these disclosures, the Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels. In addition, the Rule requires that distributors of non-liquid alternative vehicle fuel provide certifications of the fuel rating in each transfer to anyone who is not a consumer.

[1] 78 FR 23832 (April 23, 2013). The final amendments consolidated the FTC's alternative fueled vehicles (''AFV'') labels with the then new fuel economy labels required by the EPA thereby eliminating the FTC's separate labeling requirements for used AFV labels.

Burden Estimates

Annual Hours Burden: 6,000 hours.

FTC staff estimates that approximately 20,000 industry participants (non-liquid fuel producers, distributors, and retailers) are subject to the Rule's information collection requirements. The burden estimates for covered entities are detailed below.[2]

Labeling: Staff estimates that approximately 3,600 covered retailers must revise covered labels annually.[3] Staff estimates that affected retailers require approximately one hour each per year for labeling their fuel dispensers for a total of 3,600 hours (3,600 respondents × 1 hour per year).

Recordkeeping: FTC staff estimates that approximately 20,000 industry participants are subject to the Rule's recordkeeping requirements. Staff estimates that covered entities require approximately one-tenth of an hour each per year to comply with these requirements. This yields a burden of 2,000 hours per year (20,000 respondents × 0.1 hours).

Certification: Staff estimates that the Rule's fuel rating certification requirements will affect approximately 400 industry members (compressed natural gas producers and distributors and manufacturers of electric vehicle fuel dispensing systems). Staff anticipates that covered industry participants will spend approximately one hour per year to comply with this requirement for a total of 400 hours (400 respondents × 1 hour per year).

Accordingly, the estimated annual burden under the Rule is 6,000 hours (3,600 + 2,000 + 400).

Labor Costs: $175,298.

FTC staff derive labor costs by applying appropriate hourly wage figures to the burden hours described above. According to Bureau of Labor Statistics data,[4] the average compensation for fuel system operators is $35.49 per hour; and $12.91 per hour for automotive service attendants. These are factored into the FTC's estimates and assumptions below.

Labeling: Staff assumes that labeling is performed by fuel system operators. Applying relevant labor cost figures to the estimated burden hours for labeling yields an estimated annual labor cost of $127,764 (3,600 hours × $35.49).

Recordkeeping: Staff estimates that approximately 1/6 of the total recordkeeping hours are performed by fuel system operators (1/6 of 2,000 hours = approximately 333 hours; 333 hours × $35.49 = $11,818) and that automotive service attendants account for the remaining 5/6 of recordkeeping hours (5/6 of 2,000 hours = approximately 1,667 hours; 1,667 hours × $12.91 = $21,520). Accordingly, staff estimates that the total labor cost for recordkeeping for affected industry is approximately $33,338 ($11,818 + $21,520).

Certification: Staff assumes that certification is performed by fuel system operators. Estimated associated labor costs would be $14,196 (400 hours × $35.49).

Accordingly, the estimated annual labor cost under the Rule is $175,298 ($127,764 + $33,338 + $14,196).

Non-Labor Costs: $3,040.

Staff believes there are no current start-up costs associated with the Rule, which has been in effect since 1995. Industry members have in place the capital equipment and means necessary to determine automotive fuel ratings and comply with the Rule. Industry members, however, incur the cost of procuring fuel dispenser labels to comply with the Rule.

The estimated annual fuel labeling cost, based on estimates of approximately 8,000 fuel dispensers (assumptions: an estimated 20% of 20,000 total fuel retailers need to replace labels in any given year with an approximate five-year life for labels—*i.e.,* 4,000 retailers—multiplied by an average of two dispensers per retailer) at thirty-eight cents for each label (per industry sources), is $3,040 ($0.38 × 8,000).

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 6, 2021. Write ''Paperwork Comment: FTC File No. P134200'' on your comment. Your comment, including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Comment: FTC File No. P134200'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of

[2] It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and to decide how to market them. ''Burden'' for PRA purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Other factors also limit the burden associated with the Rule. Certification may be a one-time event or require only infrequent revision. Disclosures on electric vehicle fuel dispensing systems may be useable for several years. Nonetheless, there is still some burden associated with posting labels. There also will be some minimal burden associated with new or revised certification of fuel ratings and recordkeeping.

[3] Staff estimates that approximately 18,000 retailers are subject to the Rule's labeling requirements. Staff estimates that approximately 20% of covered retailers (3,600) will need to replace their labels annually because many labels remain effective for several years.

[4] The wage estimates in this Notice are based on mean hourly wages found in Table 1. National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019, at *https://www.bls.gov/news.release/ocwage.t01.htm.* The wage rate for fuel system operators is based on data for ''petroleum pump system operators, refinery operators, and gaugers.'' The wage rate for automotive attendants is based on data for ''Automotive and watercraft service attendants.''

birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 6, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021–21763 Filed 10–5–21; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in the Children's Online Privacy Protection Act Rule (''COPPA Rule'' or ''Rule''). The current clearance expires on March 31, 2022.

DATES: Comments must be filed by December 6, 2021.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''COPPA Rule: Paperwork Comment, FTC File No. P155408'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Peder Magee, Attorney, (202) 326–3538, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Children's Online Privacy Protection Act Rule, 16 CFR part 312.

OMB Control Number: 3084–0117.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 17,700.

Estimated Annual Labor Costs: $5,783,700.

Estimated Annual Non-Labor Costs: $0.

Abstract: The COPPA Rule requires commercial websites and online services to provide notice and obtain parental consent before collecting, using, or disclosing personal information from children under age thirteen, with limited exceptions. The COPPA Rule contains certain statutorily required notice, consent, and other requirements that apply to operators of any commercial website or online service directed to children that collect personal information, and operators of any commercial website or online service with actual knowledge that it is collecting personal information from children. The Rule also applies to operators that collect personal information from users of another website or online service that is directed to children. Covered operators must, among other things: Provide online notice and direct notice to parents of how they collect, use, and disclose children's personal information; obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure; provide reasonable means for the parent to obtain access to the information and to direct its deletion; and, establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

Burden Statement

1. *Annual hours burden:* 17,600 hours.

(a) New Entrant Operators' Disclosure Burden

Based on public comments received by the Commission during its 2013 COPPA Rule amendments rulemaking,[1] FTC staff estimates that the Rule affects approximately 280 new operators per year.[2] Staff maintains its longstanding estimate that new operators of websites and online services will require, on average, approximately 60 hours to draft a privacy policy, design mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.[3] This yields an estimated annual hours burden of 16,800 hours (280 respondents × 60 hours).

(b) Safe Harbor Applicant Reporting Requirements

Operators can comply with the COPPA Rule by meeting the terms of Commission-approved self-regulatory

[1] 78 FR 3971, 4005 (Jan. 17, 2013).

[2] This consists of certain traditional website operators, mobile app developers, plug-in developers, and advertising networks.

[3] *See, e.g.,* 80 FR 76491 (Dec. 9, 2015); 84 FR 1466 (Feb. 4, 2019).

program guidelines.[4] While the submission of industry self-regulatory guidelines to the agency is voluntary, the COPPA Rule sets out the criteria for approval of guidelines and the materials that must be submitted as part of an application for approval of such self-regulatory guidelines. Based on industry input, staff estimates that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.11(c) of the Rule.[5] Given that several safe harbor programs are already available to operators of websites and online services, FTC staff anticipates that no more than one additional safe harbor applicant is likely to submit a request within the next three years of PRA clearance. Thus, FTC staff estimates that annualized burden attributable to this requirement would be approximately 88 hours per year (265 hours ÷ 3 years), which is rounded to 100 hours.

(c) Annual Audit and Report for Safe Harbor Programs

The COPPA Rule requires safe harbor programs to audit their members and submit annual reports to the Commission on the aggregate results of these member audits. The burden for conducting member audits and preparing these reports likely varies by safe harbor program depending on the number of members. Commission staff estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for one new safe harbor (100 hours) and six existing (600 hours) safe harbor programs, this amounts to an estimated cumulative reporting burden of 700 hours per year (7 respondents × 100 hours).

(d) Safe harbor program recordkeeping requirements

FTC staff understands that most of the records listed in the COPPA Rule's safe harbor recordkeeping provisions consist of documentation that covered entities retain in the ordinary course of business irrespective of the COPPA Rule. As noted above, OMB excludes from the definition of PRA burden, among other things, recordkeeping requirements that customarily would be undertaken independently in the normal course of business. In staff's view, any incremental burden, such as that for maintaining the results of independent assessments under section 312.11(d), would be marginal.

2. *Estimated annual labor costs:* $5,783,700.

(a) New Entrant Operators' Disclosure Burden

Consistent with its past estimates and based on its 2013 rulemaking record, FTC staff assumes that the time spent on compliance for new operators covered by the COPPA Rule would be apportioned five to one between legal (outside counsel lawyers or similar professionals) and technical (*e.g.,* computer programmers, software developers, and information security analysts) personnel. Staff therefore estimates that outside counsel costs will account for 14,000 of the estimated 16,800 hours required as estimated in Section 1(a) above. Staff anticipates that the workload among law firm partners and associates for assisting with COPPA compliance would be distributed among attorneys at varying levels of seniority. Assuming two-thirds of such work is done by junior associates at a rate of approximately $300 per hour, and one-third by senior partners at approximately $600 per hour, the weighted average of outside counsel costs would be approximately $400 per hour.[6] FTC staff anticipates that computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms would account for the remaining 2,800 hours. FTC staff estimates an hourly wage of $49 (rounded to the nearest dollar) for technical assistance, based on Bureau of Labor Statistics (''BLS'') data.[7] Accordingly, associated annual labor costs would be $5,737,200 [(14,000 hours × $400/hour) + (2,800 hours × $49/hour)] for the estimated 280 new operators.

(b) Safe Harbor Applicant Reporting Requirements

Previously, industry sources have advised that all of the labor to comply with new safe harbor applicant requirements would be attributable to the efforts of in-house lawyers. *See* 83 FR at 49558. To determine in-house legal costs, FTC staff applied an approximate average between the BLS reported mean hourly wage for lawyers ($69.86),[8] and estimated in-house hourly attorney rates ($300) that are likely to reflect the costs associated with some safe harbor applicant costs. This yields an approximate hourly rate of $185. Applying this hourly labor cost estimate to the hours burden associated with approval for a new safe harbor application yields an estimated annual labor cost burden of $18,500 (100 hours × $185).

(c) Annual Audit and Report for Safe Harbor Programs

Commission staff assumes that compliance officers, at a mean hourly wage of $35, will prepare annual reports.[9] Applying this hourly labor cost estimate to the hours burden associated with preparing annual audit reports yields an estimated annual labor cost burden of $24,500 (700 hours × $35).

(d) Safe Harbor Program Recordkeeping Requirements

For the reasons stated in Section 1(d) above, FTC staff anticipates that the labor costs associated with safe harbor program recordkeeping are *de minimis.*

3. Estimated annual non-labor costs: $0.

FTC staff understands that covered operators already have in place the computer equipment and software necessary to comply with the Rule's notice requirements. Accordingly, the predominant costs incurred by operators are the aforementioned labor costs. Similarly, FTC staff anticipates that covered entities already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to retain such records independent of the Rule. Accordingly, FTC staff estimates that

[4] See 16 CFR 312.11(c). Approved self-regulatory guidelines can be found on the FTC's website at *http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.*

[5] *See* 83 FR 49557 (Oct. 2, 2018). Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business. Under 5 CFR 1320.3(b)(2), OMB excludes from the definition of PRA burden the time and financial resources needed to comply with agency-imposed recordkeeping, disclosure, or reporting requirements that customarily would be undertaken independently in the normal course of business.

[6] These estimates are drawn from the ''Laffey Matrix.'' The Laffey Matrix is a fee schedule used by many United States courts for determining the reasonable hourly rates in the District of Columbia for attorneys' fee awards under federal fee-shifting statutes. It is used here as a proxy for market rates for litigation counsel in the Washington, DC area. For 2020–2021, rates in table range from $333 per hour for most junior associates to $665 per hour for the most senior partners. *See* Laffey Matrix, Civil Division of the United States Attorney's Office for the District of Columbia, United States Attorney's Office, District of Columbia, Laffey Matrix B 2015–2021, *available at https://www.justice.gov/usao-dc/page/file/1305941/download.*

[7] The estimated mean hourly wages for technical labor support ($44) is based on an average of the mean hourly wage for computer programmers, software developers, information security analysts, and web developers as reported by the Bureau of Labor statistics. *See Occupational Employment and Wages—May 2019,* Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019), *available at https://www.bls.gov/news.release/ocwage.t01.htm* (hereinafter, ''BLS Table 1'').

[8] *See* BLS Table 1 (attorneys).

[9] *See* BLS Table 1 (compliance officers, $35.03).

the capital and non-labor costs associated with Rule compliance are *de minimis.*

Request for Comments

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the COPPA Rule.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before December 6, 2021.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 6, 2021. Write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment. Your comment, including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 6, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021–21753 Filed 10–5–21; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 191 0068/Docket No. C–4691]

Petition of Respondent DTE Energy Company To Reopen and Modify Decision and Order

AGENCY: Federal Trade Commission.

ACTION: Announcement of Petition; Request for Comment.

SUMMARY: DTE Energy Company (''DTE'' or ''the company'') has requested that the Federal Trade Commission (''FTC'' or ''Commission'') reopen and modify the Commission's Decision and Order entered on November 21, 2019 (the ''Order''), concerning the purchase of a natural gas pipeline and related assets. DTE requests that the Commission relieve the company of all continuing obligations under the Order because DTE has exited the relevant market addressed by the Order and its successor remains under the Order. Publication of the petition from DTE is not intended to affect the legal status of the petition or its final disposition.

DATES: Comments must be received on or before November 5, 2021.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''DTE Petition to Reopen and Modify; Docket No. C–4691'' on your comment, and file your comment online at *www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Aylin M. Skroejer (202–326–2459), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(g) of the Federal Trade

Commission Act, 15 U.S.C. 46(g), and FTC Rule 2.51, 16 CFR 2.51, notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and is being placed on the public record for a period of thirty (30) days. After the period for public comments has expired and no later than one hundred and twenty (120) days after the date of the filing of the request, the Commission shall determine whether to reopen the proceeding and modify the Order as requested. In making its determination, the Commission will consider, among other information, all timely and responsive comments submitted in connection with this notice.

The full text of petition is provided below. An electronic copy of the full text of the petition and the exhibits attached to it can be obtained from the FTC website at this web address: *https://www.ftc.gov/enforcement/cases-proceedings/191-0068/dte-energy-company-matter.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 5, 2021. Write ''DTE Petition to Reopen and Modify; Docket No. C–4691'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *www.regulations.gov* website.

If you prefer to file your comment on paper, write ''DTE Petition to Reopen and Modify; Docket No. C–4691'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 5, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Authority: 15 U.S.C. 46, 5 U.S.C. 552.

April J. Tabor,

Secretary.

Text of Petition of Respondent DTE Energy Company To Reopen and Modify Decision and Order

Pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Federal Trade Commission Rules of Practice, 16 CFR 2.51, Respondent DTE Energy Company (''DTE'') respectfully requests that the Commission reopen and modify the Commission's Decision and Order entered on November 21, 2019, in Docket No. C–4691 (the ''Order'') (attached as Exhibit 1). Specifically, because DTE has exited the relevant market addressed by the Order and because DTE's successor remains under the Order, DTE seeks to vacate the Order as it applies to DTE or otherwise to relieve DTE of any continuing obligations under the Order.

The Commission entered the Order to address the alleged anticompetitive effect from the acquisition of Generation Pipeline LLC (''Generation'') by NEXUS Gas Transmission, LLC (''NEXUS''), at the time, a 50/50 joint venture between DTE and Enbridge Inc. Under the Order, Respondents NEXUS, DTE, and Enbridge were required, among other things, to remove a non-compete provision in the Purchase and Sale Agreement governing NEXUS's acquisition of Generation. At all times since the entry of the Order, DTE has complied with the Order in all respects.

In November 2020, DTE notified the Commission that it intended to spin off its DTE Midstream business, which included DTE's non-utility natural gas pipeline, storage, and gathering business, to a separate corporate entity now known as DT Midstream, Inc. (the ''Spin-off'). The Spin-off was completed on July 1, 2021. As a result, DTE no longer holds, directly or indirectly, an interest in NEXUS, Generation, or any other natural gas pipeline, storage, or gathering assets or business in the Relevant Area.[1] DT Midstream has succeeded to DTE's obligations under the Order, while NEXUS and Enbridge remain Respondents under the Order. Those three entities are the appropriate Respondents under the Order.

In light of these changed conditions of fact, DTE hereby petitions the Commission to reopen and modify the Order to relieve DTE of all continuing obligations under the Order. Such relief is in the public interest.

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Order.

I. Background

A. Initial Transaction

The acquisition of Generation by NEXUS was subject to review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''). In the course of the HSR Act review, Commission staff raised concerns regarding the non-compete provision in the Purchase and Sale Agreement, which would have prevented North Coast Gas Transmission LLC, the previous owner of Generation, from competing to provide natural gas transportation within a restricted area encompassing parts of Lucas, Ottawa, and Wood counties in Ohio for a period of three years. As a means of resolving such concerns, DTE and the other Respondents executed an agreement containing the Order in August 2019. On September 13, 2019, the Commission accepted the agreement containing the Order and published it for public comment.

B. The Order

On November 21, 2019, the Commission, pursuant to procedures described in Section 2.34 of its Rules, 16 CFR 2.34, entered the Order. To address the concern that the non-compete provision would result in harm to competition in the natural gas pipeline transportation market in the Relevant Area (*i.e.,* Lucas, Ottawa, and Wood counties in northwest Ohio), Paragraph II.A of the Order required the removal of the non-compete provision from the Purchase and Sale Agreement. On September 13, 2019, prior to the closing of the Generation acquisition, DTE and the other parties to the transaction amended the Purchase and Sale Agreement to eliminate the non-compete provision.

Other provisions of the Order impose certain prior approval, notification, and reporting requirements on DTE and the other Respondents, including the requirement to obtain prior Commission approval before entering certain agreements restricting competition for natural gas pipeline transportation in the Relevant Area (¶ II.B), to provide prior notice before acquiring an interest in any natural gas transportation pipeline in the Relevant Area (¶ III), to report annually on compliance (¶ IV), and to notify the Commission regarding changes in any Respondent that may affect compliance (¶ V).

C. DTE's Compliance With the Order

At all times since the entry of the Order, DTE has been in compliance with the Order. DTE filed its first annual compliance report in November 2020. In response, Commission staff issued a letter stating that no compliance action is necessary. In addition, DTE previously had filed several initial and interim compliance reports, including initial compliance reports on October 15, 2019 and November 13, 2019, each under Paragraph 7 of the agreement containing the Order, and an interim compliance report on December 20, 2019, under Paragraph IV.A.I of the Order.

D. DTE's Spin-Off Transaction

First publicly announced in October 2020, the Spin-off provides benefits to both DTE and DT Midstream, as well as each company's employees and shareholders. *See* October 27, 2020 DTE Press Release (attached as Exhibit 2). Among other things, the Spin-off ''[t]ransforms DTE [ ] into a high growth, predominately pure-play, regulated Michigan-based utility'' and ''[p]ositions [DT] Midstream as a premier independent, natural gas midstream company with assets in premium basins connected to major demand markets.'' *Id.* The Spin-off will ''[e]nable[ ] each business to pursue separate and distinct strategies led by proven boards and management teams who have skillsets and experience directly linked to each company's unique strategic and financial objectives.'' *Id.*

The Spin-off was completed on July 1, 2021. On that day, DT Midstream, which formerly included DTE's non-utility natural gas pipeline, storage, and gathering business, became a publicly traded, standalone company. *See* July 1, 2021 DTE Press Release (attached as Exhibit 3). DT Midstream common stock trades on the New York Stock Exchange under the symbol DTM. Although DTE and DT Midstream have one common board member, this complies with Clayton Act Section 8. Under the Spin-off, DTE's SO-percent ownership interest in NEXUS was transferred to DT Midstream. *See* Declaration of JoAnn Chavez of DTE Energy Co. (attached as Exhibit 4), at 4. In addition, DT Midstream has certified to the Commission that it has succeeded to DTE's obligations under the Order and will comply therewith. *See* Letter from Wendy Ellis of DT Midstream (attached as Exhibit 5).

The Spin-off thus leaves DTE with:

(1) No interest (direct or indirect) in NEXUS;

(2) no interest (direct or indirect) in Generation; and

(3) no interest (direct or indirect) in any other natural gas pipeline, storage, or gathering assets or business in the Relevant Area.

DTE has no plans or present intention to acquire any direct or indirect interest in DT Midstream, NEXUS, or Generation, or otherwise to enter the market for natural gas pipeline ransportation in the Relevant Area. *See* Declaration of JoAnn Chávez of DTE Energy Co., at ¶ 6.

II. Changed Conditions of Fact and the Public Interest Require Modification of the Order To Remove DTE as a Respondent

A. Changed Conditions of Fact

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), and Section 2.51(b) of the Commission's Rules of Practice, 16 CFR 2.51(b), provide that the Commission may reopen and modify an order if the respondent makes a satisfactory showing that changed conditions of law or fact require the order to be altered, modified, or set aside, or that the public interest so requires. The Commission has stated that ''[a] satisfactory showing sufficient to require reopening is made when a request identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.'' *Eli Lilly & Co.,* Dkt. No. C–3594, Order Reopening and Setting Aside Order, at 2 (May 13, 1999). Further, if the Commission determines that the respondent has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. *See Stop and Shop Cos., Inc.,* Dkt. No. C–3649, Order Reopening and Modifying Order, at 5 (June 20, 1997).

As the Commission has determined in numerous cases, the exit of a respondent from the relevant market eliminates the continuing need for the Order's remaining requirements to apply to that respondent and thus is a changed circumstance sufficient to support the setting aside of the Order as to the respondent. *See, e.g., AEA Investors 2006 Fund L.P.,* Dkt. No. C–4297, Order Reopening and Modifying Final Order (Apr. 30, 2013) (order set aside for respondent that no longer held interest in businesses covered by the order); *Duke Energy Corp.,* Dkt. No. C–3932, Order Reopening and Modifying Order (Sept. 26, 2007) (order set aside for respondent that had spun off midstream natural gas business covered by the order); *Koninklijke Ahold, NV.,* Dkt. No. C–4027, Order Reopening and Modifying Order (July 10, 2007) (order set aside for respondent that no longer operated supermarkets in relevant areas

covered by the order) and Order Reopening and Modifying Order (July 21, 2006) (same); *Entergy Corp.,* Dkt. No. C–3998, Order Reopening and Setting Aside Order (July 1, 2005) (order set aside for respondent that had sold the business covered by the order); *Union Carbide Corp.,* 108 F.T.C. 184 (1986) (order set aside for respondent that had exited business covered by the order).

DTE's Spin-off of DT Midstream constitutes a changed condition of fact that justifies the Commission to modify the Order to relieve DTE of its obligations under the Order, because the Spin-off leaves DTE with no direct or indirect interest in any natural gas pipeline, storage, or gathering assets or business in the Relevant Area, which was not the case at the time the Commission issued the Order. This change eliminates the basis for the Commission's concern with respect to DTE's presence in natural gas pipeline transportation in the Relevant Area.

In particular, the Order provision requiring prior notice of any DTE acquisition of an interest in a natural gas transportation pipeline in the Relevant Area is no longer necessary. DTE no longer has an ownership interest in either NEXUS or DT Midstream. As a result, DTE no longer competes to provide natural gas transportation in the Relevant Area. If DTE were to enter that market, such entry by DTE would introduce new competition. Rather than create a need for coverage under the Order, such entry would be procompetitive. In contrast, DT Midstream, which does compete to provide natural gas transportation in the Relevant Area, will continue to be subject to the Order, including this prior notice provision.

Similarly, the Order provision requiring DTE to obtain prior Commission approval before entering agreements concerning natural gas pipeline transportation in the Relevant Area is no longer necessary. The purpose of that provision is to provide the Commission with an opportunity to review any potentially anticompetitive agreements ''between one or more Respondents and a Pipeline Competitor to provide natural gas transportation in the Relevant Area.'' Order II.B. As a result of the Spin-off, DTE no longer provides natural gas transportation in the Relevant Area. Because DTE is no longer in a horizontal competitive relationship with any Pipeline Competitor in the Relevant Area, there is no longer a need for the Commission to review any agreement DTE may seek to enter with such a firm. In contrast, DT Midstream, which does provide natural gas transportation in the Relevant Area, will continue to be subject to the Order, including this prior approval provision.

Consistent with longstanding FTC precedent, changed conditions of fact warrant the removal of DTE from the Order.

B. Public Interest

Because changed circumstances warrant reopening and modification here, the Commission need not consider whether removing DTE from the Order would serve the public interest. *See, e.g., Duke Energy Corp.,* Order Reopening and Modifying Order, at 3 (''In this instance, however, we do not need to assess the sufficiency of Petitioners' public interest showing because Petitioners have made the requisite satisfactory showing that changed conditions of fact require the Order to be reopened and set aside as to Duke Energy.''); *Entergy Corp.,* Order Reopening and Setting Aside Order, at 3 (same). However, should the Commission deem it necessary to assess the public interest in setting aside the Order as to DTE, such modification would serve the public interest.

DTE meets the public interest requirement of Section 2.51(b) because, among other reasons, ''the order in whole or part is no longer needed.'' Requests to Reopen, 65 FR 50,636, 50,637 (Aug. 21, 2000) (amending 16 CFR 2.51(b)). As a result of the Spin-off, DTE no longer has any natural gas pipeline transportation assets or business in the Relevant Area. Requiring DTE's continued compliance with the Order's prior approval, notice, and reporting provisions therefore contributes nothing to the Commission's interest in protecting competition and is not needed to protect the public interest.

Further, setting aside the Order as to DTE would eliminate unnecessary costs and burdens to DTE and the Commission during the remainder of the term of the Order—another eight years (through November 21, 2029). At the same time, because DT Midstream has certified to the Commission that it has succeeded to DTE's obligations under the Order and will comply with it, removing DTE from the Order would be the ''more effective or efficient way of achieving the purposes of the Order.'' *Id.* Therefore, the public interest requires the setting aside of the Order as to DTE.

III. Conclusion

For these reasons, Respondent DTE respectfully requests that the Commission reopen and vacate the Order as it applies to DTE, or to otherwise modify the Order to relieve DTE of any continuing obligations thereunder. Such a modification is justified by changed conditions of fact, and is consistent with the public interest and the underlying purposes of the Order. The attached Declaration and other accompanying exhibits set forth and support the specific facts described herein and demonstrate why the requested modification of the Order is appropriate.

Dated: September 21, 2021

Respectfully submitted,

s/Mike Cowie

Mike Cowie, Greg Luib, *Dechert LLP*, 1900 K Street NW, Washington, DC 20008, Attorneys for Respondent DTE Energy Company.

[FR Doc. 2021–21808 Filed 10–5–21; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0287; Docket No. 2021–0001; Sequence No. 8]

Submission for OMB Review; Background Investigations for Child Care Workers; GSA Form 176

AGENCY: Office of Mission Assurance, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding the collection of personal data for background investigations for childcare workers accessing GSA owned and leased controlled facilities.

DATES: *Submit comments on or before:* November 5, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Ahn, Security Officer, Office of Mission Assurance, GSA, by phone at 202-219-0273, or email at *phillip.ahn@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Homeland Security Presidential Directive (HSPD) 12 ''Policy for a Common Identification Standard for Federal Employees and Contractors'' requires the implementation of a governmentwide standard for secure and reliable forms of identification for Federal employees and contractors. OMB's implementing instructions requires all contract employees requiring routine access to federally controlled facilities for greater than six (6) months to receive a background investigation. The minimum background investigation is Tier 1 and the Office of Personnel Management offers a Tier 1C for child care.

However, there is no requirement in the law or HSPD–12 that requires childcare employees to be subject to the Tier 1C since employees of childcare providers are neither government employees nor government contractors. The childcare providers are required to complete the criminal history background checks mandated in the Crime Control Act of 1990, Public Law 101–647, dated November 29, 1990, as amended by Public Law 102–190, dated December 5, 1991. These statutes require that each employee of a childcare center located in a Federal building or in leased space must undergo a background check.

According to GSA policy, childcare workers (as described above) will need to submit the following:

1. An original signed copy of a *Basic National Agency Check Criminal History,* GSA Form 176; and

2. Two sets of fingerprints on FBI Fingerprint Cards, for SF–87 and/or electronic prints from an enrollment center.

3. Electronically submit the e-qip (SF85) application for completion of the Tier 1C.

This is not a request to collect new information; this is a request to change the form that is currently being used to collect this information.

B. Annual Reporting Burden

Respondents: 1,200.
Responses per Respondent: 1.
Hours per Response: 1.
Total Burden Hours: 1,200.

C. Public Comments

A 60-day notice published in the **Federal Register** at 86 FR 40843 on July 29, 2021. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite Background Investigations for Child Care Workers, in all correspondence.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2021–21756 Filed 10–5–21; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Healthcare Infection Control Practices Advisory Committee (HICPAC). This virtual meeting is open to the public, limited only by audio and web conference lines (300 audio and web conference lines are available). Registration is required. To register for this web conference, please go to: *www.cdc.gov/hicpac.* All registered participants will receive the meeting link and instructions shortly before the meeting.

DATES: The meeting will be held on October 28, 2021, from 12:00 p.m. to 1:30 p.m., EDT.

ADDRESSES: Please click the link below to join the webinar: *https://cdc.zoomgov.com/j/1609325980?pwd=YmFGbWNLUHlXOEVoakpucXpld0NSUT09.*

Meeting ID: 160 932 5980.
Passcode: b7G.nXEG.
Dial-in Lines:
+1–669–254–5252 (San Jose).
+1–646–828–7666 (New York).
Meeting ID: 160 93 2 5980.
Phone Passcode: 40602373.

FOR FURTHER INFORMATION CONTACT: Koo-Whang Chung, M.P.H., HICPAC, Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, CDC, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329–4027, Telephone: (404) 498–0730; Email: *HICPAC@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion (DHQP), the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), the Director, CDC, the Secretary, Health and Human Services regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Considered: The agenda will include the following updates: The Division Healthcare Quality Promotion; the Healthcare Personnel Guideline Workgroup; and the Neonatal Intensive Care Unit Workgroup. Agenda items are subject to change as priorities dictate.

Procedures for Public Comment: Time will be available for public comment. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed. Please note that the public comment period may end before the time indicated, following the last call for comments.

Procedures for Written Comment: The public may submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed above. The deadline for receipt of written public comment is October 22, 2021. All requests must contain the name, address, and organizational affiliation of the speaker, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length. Written comments received in advance of the meeting will be included in the official record of the meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–21806 Filed 10–5–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Lead Exposure and Prevention Advisory Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Lead Exposure and Prevention Advisory Committee (LEPAC). This meeting is open to the public by teleconference but advance registration by November 19, 2021 is needed to receive the information to join the meeting. The registration link is *https://www.zoomgov.com/webinar/register/WN_qeMSB7npRJ23PTV6t1KMtQ.*

DATES: The meeting will be held on December 3, 2021, from 9:00 a.m. to 4:15 p.m., EST.

ADDRESSES: Register in advance at *https://www.zoomgov.com/webinar/register/WN_qeMSB7npRJ23PTV6t1KMtQ* to receive the information to join the meeting.

FOR FURTHER INFORMATION CONTACT: Alexis Pullia, M.P.H., C.P.H., Committee Management Specialist, National Center for Environmental Health, CDC, 4770 Buford Highway, Atlanta, GA, 30341, Telephone: (770) 488–3300; Email: *lepac@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Lead Exposure and Prevention Advisory Committee was established under Section 2203 of Public Law 114–322, the Water Infrastructure Improvements for the Nation Act; 42 U.S.C. 300j–27, Registry for Lead Exposure and Advisory Committee. The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 2203 of Public Law 114–322 (42 U.S.C. 300j–27) to review research and Federal programs and services related to lead poisoning and to identify effective services and best practices for addressing and preventing lead exposure in communities.

The LEPAC is charged with providing advice and guidance to the Secretary, HHS, and the Director, CDC and Administrator, ATSDR, on (1) reviewing Federal programs and services available to individual communities exposed to lead; (2) reviewing current research on lead exposure to identify additional research needs; (3) reviewing and identifying best practices, or the need for best practices regarding lead screening and the prevention of lead poisoning; (4) identifying effective services, including services relating to healthcare, education, and nutrition for individuals and communities affected by lead exposure and lead poisoning, including in consultation with, as appropriate, the lead exposure registry as established in Section 2203 (b) of Public Law 114–322; and (5) undertaking any other review or activities that the Secretary determines to be appropriate.

Matters To Be Considered: The agenda will include updates on the blood lead reference value, lead-related activities from Federal LEPAC Members, the 1988 CLIA Amendment, and from Federal environmental justice efforts focused on lead, a discussion of best practices for increasing and enhancing screening in underserved populations, and presentations on mapping efforts to identify populations at higher risk of lead exposure and Lead Safe Cleveland. Agenda items are subject to change as priorities dictate.

Public Participation

Procedure for Oral Public Comment: The public comment period is scheduled on December 3, 2021 from 11:05 a.m. until 11:20 a.m. Individuals wishing to make a comment during the public comment period, please email your name, organization, and telephone number by November 19, 2021, to *LEPAC@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–21807 Filed 10–5–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1396]

Use of Data From Foreign Investigational Studies To Support Effectiveness of New Animal Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry #265 entitled ''Use of Data from Foreign Investigational Studies to Support Effectiveness of New Animal Drugs.'' The guidance describes FDA's current thinking with respect to assisting sponsors in incorporating data from foreign countries into proposed clinical investigational protocols and applications for new animal drugs under the Federal Food, Drug, and Cosmetic Act.

DATES: The announcement of the guidance is published in the **Federal Register** on October 6, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2020–D–1396 for ''Use of Data from Foreign Investigational Studies to Support Effectiveness of New Animal Drugs.'' 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Storey, Center for Veterinary Medicine (HFV–131), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0578, *Susan.Storey@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 15, 2020 (85 FR 42867), FDA published the notice of availability for a draft guidance entitled ''Use of Data from Foreign Investigational Studies to Support Effectiveness of New Animal Drugs,'' giving interested persons until October 13, 2020, to comment on the draft guidance. This final guidance describes principles for designing, conducting, and reporting the results for investigations or studies, including data from foreign countries, in submissions to FDA of investigational new animal drug files, new animal drug applications (NADAs), and applications for conditional approval of a new animal drug (CNADAs) to demonstrate substantial evidence of effectiveness for NADAs or a reasonable expectation of effectiveness for CNADAs. It also describes how sponsors may obtain feedback from the Center for Veterinary Medicine regarding the incorporation of data from foreign countries into investigations and study protocols before the submission of an application.

FDA received comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to this final guidance to improve clarity. For example, we revised the language of the draft guidance to provide greater clarity regarding the level of evidence that may be required under certain circumstances to support effectiveness in clinical investigation protocols and applications. The guidance announced in this notice finalizes the draft guidance dated July 2020.

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 ''Use of Data from Foreign Investigational Studies to Support Effectiveness of New Animal Drugs.'' 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 FDA's guidance entitled ''Use of Data from Foreign Investigational Studies to Support Effectiveness of New Animal Drugs'' 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, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 29, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21686 Filed 10–5–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1401]

Adaptive and Other Innovative Designs for Effectiveness Studies of New Animal Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry (GFI) #268 entitled ''Adaptive and Other Innovative Designs for Effectiveness Studies of New Animal Drugs.'' The guidance describes FDA's current thinking with respect to assisting sponsors in incorporating complex adaptive and other novel investigation designs into proposed clinical investigation protocols and applications for new animal drugs under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on October 6, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2020–D–1402 for ''Adaptive and Other Innovative Designs for Effectiveness Studies of New Animal Drugs.'' 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, 7519 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Storey, Center for Veterinary Medicine (HFV–131), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0578, *susan.storey@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 15, 2020 (85 FR 42887), FDA published the notice of availability for a draft guidance entitled ''Adaptive and Other Innovative Designs for Effectiveness Studies of New Animal Drugs,'' giving interested persons until October 13, 2020, to comment on the draft guidance. This final guidance describes recommendations for designing, conducting, and reporting the results for investigations or studies, including adaptive design features, when they are incorporated into clinical investigations submitted to the Center for Veterinary Medicine (CVM) to demonstrate substantial evidence of effectiveness for new animal drug applications or a reasonable expectation of effectiveness for applications for conditional approval of a new animal drug. It also describes how sponsors may obtain feedback from CVM on technical issues related to the use of adaptive and innovative designs before the submission of an application.

FDA received comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to this final guidance to improve clarity. For example, we revised the language of the draft guidance to provide additional information regarding the appropriate types of documentation to support a justification for the use of an adaptive design. The guidance announced in this notice finalizes the draft guidance dated July 2020.

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 adaptive and other innovative designs for effectiveness studies of new animal drugs. 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 FDA's guidance entitled ''Adaptive and Other Innovative Designs for Effectiveness Studies of New Animal Drugs'' 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, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 29, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21689 Filed 10–5–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product; Withdrawal

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the notice that published in the **Federal Register** of September 30, 2021, that announced the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The **Federal Register** notice was published in error and is being withdrawn.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 2021 (86 FR 54219) in FR Doc. 2021–21311, FDA announced the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application for RETHYMIC (allogeneic processed thymus tissue-agdc), manufactured by Enzyvant Therapeutics, GmbH. The **Federal Register** notice was published in error and is being withdrawn.

Dated: October 1, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21823 Filed 10–5–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1402]

Biomarkers and Surrogate Endpoints in Clinical Studies To Support Effectiveness of New Animal Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry (GFI) #267 entitled ''Biomarkers and Surrogate Endpoints in Clinical Studies to Support Effectiveness of New Animal Drugs.'' The guidance describes FDA's current thinking with respect to incorporating biomarkers and surrogate endpoints into proposed clinical investigational protocols and applications for new animal drugs under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on October 6, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2020–D–1402 for ''Biomarkers and Surrogate Endpoints in Clinical Studies to Support Effectiveness of New Animal Drugs.'' 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Storey, Center for Veterinary Medicine (HFV–131), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0578, *susan.storey@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 15, 2020 (85 FR 42879), FDA published the notice of availability for a draft guidance entitled ''Biomarkers and Surrogate Endpoints in Clinical Studies to Support Effectiveness of New Animal Drugs,'' giving interested persons until October 13, 2020, to comment on the draft guidance. This final guidance describes how the Center for Veterinary Medicine (CVM) intends to evaluate biomarkers, including surrogate endpoints, when they are incorporated into clinical investigations submitted to CVM to demonstrate substantial evidence of effectiveness for new animal drug applications or a reasonable expectation of effectiveness for applications for conditional approval of a new animal drug. It also describes how sponsors may obtain feedback from CVM on technical issues related to the use of biomarkers before the submission of an application.

FDA received comments on the draft guidance and those comments were considered as the guidance was finalized. For example, we received a comment suggesting that we remove from the guidance discussion of biomarkers and a new animal drug's mechanism of action (MOA) with the thought that the MOA is not a primary endpoint and is, therefore, out of the scope of the guidance. We revised this section of the final guidance by adding examples of when consideration of a new animal drug's MOA may be relevant for purposes of evaluating the use of biomarkers. We also made other editorial changes to this final guidance to improve clarity. The guidance announced in this notice finalizes the draft guidance dated July 2020.

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 ''Biomarkers and Surrogate Endpoints in Clinical Studies to Support Effectiveness of New Animal Drugs.'' 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 FDA's guidance entitled ''Biomarkers and Surrogate Endpoints in Clinical Studies to Support Effectiveness of New Animal Drugs'' 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, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 29, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21688 Filed 10–5–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–D–1136 and FDA–2020–D–1138]

Guidance Documents Related to Coronavirus Disease 2019; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of FDA guidance documents related to the Coronavirus Disease 2019 (COVID–19) public health emergency (PHE). This notice of availability (NOA) is pursuant to the process that FDA announced, in the **Federal Register** of March 25, 2020, for making available to the public COVID–19-related guidances. The guidances identified in this notice address issues related to the COVID–19 PHE and have been issued in accordance with the process announced in the March 25, 2020, notice. The guidances have been implemented without prior comment, but they remain subject to comment in accordance with the Agency's good guidance practices. FDA is also announcing the withdrawal of two FDA guidance documents related to the COVID–19 PHE.

DATES: The announcement of the guidances is published in the **Federal Register** on October 6, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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 name of the guidance document that the comments address and the docket number for the guidance (see table 1). Received comments will be placed in the docket(s) 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 § 10.115(g)(5) (21 CFR 10.115(g)(5))).

Submit written requests for single copies of these guidances to the address noted in table 1. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Kimberly Thomas, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6220, Silver Spring, MD 20993–0002, 301–796–2357; or Erica Takai, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–6353.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2020, as a result of confirmed cases of COVID–19, and after consultation with public health officials as necessary, the Secretary of Health and Human Services (HHS), pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247d), determined that a PHE exists and has existed since January 27, 2020, nationwide.[1] On March 13, 2020, there was a Presidential declaration that the COVID–19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020.[2]

In the **Federal Register** of March 25, 2020 (85 FR 16949) (the March 25, 2020, notice) (available at *https://www.govinfo.gov/content/pkg/FR-2020-03-25/pdf/2020-06222.pdf*), FDA announced procedures for making available FDA guidances related to the COVID–19 PHE. These procedures, which operate within FDA's established good guidance practices regulations, are intended to allow FDA to rapidly disseminate Agency recommendations and policies related to COVID–19 to industry, FDA staff, and other stakeholders. The March 25, 2020, notice stated that due to the need to act quickly and efficiently to respond to the COVID–19 PHE, FDA believes that prior public participation will not be feasible or appropriate before FDA implements COVID–19-related guidances. Therefore, FDA will issue COVID–19-related guidances for immediate implementation without prior public comment (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)) and § 10.115(g)(2)). The guidances are available on FDA's web pages entitled ''COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders'' (available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders*) and ''Search for FDA Guidance Documents'' (available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents).*

The March 25, 2020, notice further stated that, in general, rather than publishing a separate NOA for each COVID–19-related guidance, FDA intends to publish periodically a consolidated NOA announcing the availability of certain COVID–19-related guidances that FDA issued during the relevant period, as included in table 1. This notice announces COVID–19-related guidances that are posted on FDA's website.

[1] Secretary of Health and Human Services, ''Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus'' (originally issued on January 31, 2020, and subsequently renewed), available at: *https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.*

[2] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (March 13, 2020), available at: *https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.* On February 24, 2021, there was a Presidential Declaration continuing the national emergency concerning the COVID–19 pandemic beyond March 1, 2021. See Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic (February 24, 2021), available at *https://www.federalregister.gov/documents/2021/02/26/2021-04173/continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic.*

II. Availability of COVID–19-Related Guidance Documents

Pursuant to the process described in the March 25, 2020, notice, FDA is announcing the availability of the following COVID–19-related guidances:

TABLE 1—GUIDANCES RELATED TO THE COVID–19 PUBLIC HEALTH EMERGENCY

Docket No.	Center	Title of guidance	Contact information to request single copies
FDA–2020–D–1136.	CDER	Development of Abbreviated New Drug Applications During the COVID–19 Pandemic—Questions and Answers; Guidance for Industry (Updated September 2021).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1136 and complete title of the guidance in the request.
FDA–2020–D–1138.	CDRH	Enforcement Policy for Face Masks, Barrier Face Coverings, Face Shields, Surgical Masks, and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (Updated September 2021).	*CDRH-Guidance@fda.hhs.gov.* Please include the document number 20018 and complete title of the guidance in the request.

Although these guidances have been implemented immediately without prior comment, FDA will consider all comments received and revise the guidances as appropriate (see § 10.115(g)(3)).

These guidances are being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidances represent the current thinking of FDA. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

A. CDER Guidance

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information (listed in table 2). 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 the following FDA regulations and guidances have been approved by OMB as listed in the following table:

TABLE 2—CDER GUIDANCES AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance title referenced in COVID–19 guidance	OMB control No(s).
Development of Abbreviated New Drug Applications During the COVID–19 Pandemic—Questions and Answers; Guidance for Industry (Updated September 2021).	21 CFR 211.170, 21 CFR 314.3, 21 CFR 314.50, 21 CFR 314.94, 21 CFR 314.101, 21 CFR 314.105, 21 CFR 314.107, 21 CFR 320.25, 21 CFR 320.31, 21 CFR 320.38, 21 CFR 320.63.	(1) ANDAs: Stability Testing of Drug Substances and Products, Questions and Answers. (2) Referencing Approved Drug Products in ANDA Submissions. (3) Protecting Participants in Bioequivalence Studies for Abbreviated New Drug Applications During the COVID–19 Public Health Emergency. (4) Safety Reporting Requirements for INDs and BA/BE Studies. (5) Controlled Correspondence Related to Generic Drug Development. (6) Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA. (5) Controlled Correspondence Related to Generic Drug Development. (7) Conduct of Clinical Trials of Medical Products during the COVID–19 Pandemic. (8) ANDAs: Stability Testing of Drug Substances and Products, Questions and Answers. (9) Manufacturing, Supply Chain, and Drug and Biological Product Inspections During COVID–19 Public Health Emergency Questions and Answers.	0910–0001, 0910–0014, 0910–0119, 0910–0139, 0910–0338, 0910–0581, 0910–0672, 0910–0733, 0910–0797.

B. CDRH Guidance

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information (listed in table 3). Therefore, clearance by OMB under the 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 the following FDA regulations and guidance have been approved by OMB as listed in the following table:

TABLE 3—CDRH GUIDANCES AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance title referenced in COVID–19 guidance	OMB control No(s).
Enforcement Policy for Face Masks and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (Revised); Guidance for Industry and Food and Drug Administration Staff.	800, 801, and 809		0910–0485
	803		0910–0437
	806		0910–0359
	807, subpart E		0910–0120
	807, subparts A through D		0910–0625
	820		0910–0073
	830 and 801.20		0910–0720
		Emergency Use Authorization of Medical Products and Related Authorities; Guidance for Industry and Other Stakeholders.	0910–0595

IV. Withdrawn COVID–19-Related Guidance Documents

On June 30, 2021, FDA announced the revocation of the Emergency Use Authorizations (EUAs) for Decontamination and Bioburden Reduction Systems for Personal Protective Equipment. The full text of the revocations are available electronically at *https://www.regulations.gov* (Docket No. FDA–2021–N–0762) and *https://www.fda.gov/medical-devices/emergency-use-authorizations-medical-devices/historical-information-about-device-emergency-use-authorizations.* With the revocation of these EUAs, on June 30, 2021, FDA also withdrew two related decontamination and bioburden reduction guidance documents (listed in table 4), as the documents no longer represent the Agency's current thinking.

TABLE 4—WITHDRAWN GUIDANCES RELATED TO THE COVID–19 PUBLIC HEALTH EMERGENCY

Docket No.	Center	Title of withdrawn guidance	Withdrawal date
FDA–2020–D–1138	CDRH	Recommendations for Sponsors Requesting EUAs for Decontamination and Bioburden Reduction Systems for Face Masks and Respirators During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency; Guidance for Industry and Food and Drug Administration Staff.	June 30, 2021.
FDA–2020–D–1138	CDRH	Enforcement Policy for Bioburden Reduction Systems Using Dry Heat to Support Single-User Reuse of Certain Filtering Facepiece Respirators During the Coronavirus Disease (2019) Public Health Emergency.	June 30, 2021.

These withdrawn guidance documents are presented on FDA's website, for historical purposes only, at *https://www.fda.gov/medical-devices/guidance-documents-medical-devices-and-radiation-emitting-products/withdrawn-guidance.*

V. Electronic Access

Persons with access to the internet may obtain COVID–19-related guidances at:

- FDA web page entitled ''COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders;*
- FDA web page entitled ''Search for FDA Guidance Documents'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents;* or
- *https://www.regulations.gov.*

Dated: September 30, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21798 Filed 10–5–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1400]

Use of Real-World Data and Real-World Evidence To Support Effectiveness of New Animal Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry (GFI) #266 entitled ''Use of Real-World Data and Real-World Evidence to Support Effectiveness of New Animal Drugs.'' The guidance describes FDA's current thinking with respect to assisting sponsors in incorporating real-world data and real-world evidence (including ongoing surveillance activities, observational studies, and registry data) into proposed clinical investigation protocols and applications for new animal drugs under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on October 6, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2020–D–1400 for ''Use of Real-World Data and Real-World Evidence to Support Effectiveness of New Animal Drugs.'' 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, 7519 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Storey, Center for Veterinary Medicine (HFV–131), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0578, *susan.storey@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, the Agency has taken steps to leverage modern, rigorous analyses of real-world data to inform our work. The COVID–19 pandemic has brought an urgency to these efforts and the Agency has worked quickly to advance collaborations with public and private partners to collect and analyze a variety of real-world data sources. We recognize that real-world data sources have the potential to provide a wealth of rapid, actionable information to support and advance regulatory decision making for both human and animal drugs.

In the **Federal Register** of July 15, 2020 (85 FR 42880), FDA published the notice of availability for a draft guidance entitled ''Use of Real-World Data and Real-World Evidence to Support Effectiveness of New Animal Drugs,'' giving interested persons until October 13, 2020, to comment on the draft guidance. This guidance describes how the Center for Veterinary Medicine (CVM) intends to evaluate real-world data (RWD) and real-world evidence (RWE) in submissions to CVM to demonstrate substantial evidence of effectiveness for new animal drug applications or a reasonable expectation of effectiveness for applications for conditional approval of a new animal drug. It also provides information about how sponsors may obtain feedback from CVM on technical issues related to the use of RWD and RWE before the submission of an application.

FDA received comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to this final guidance to improve clarity. For example, we added language to provide context to the use of RWD and RWE from retrospective studies in addition to RWD and RWE from prospective studies. We also revised the language of the guidance to clarify that the term ''animals'' can refer to an individual animal or a flock, tank, or group depending on the context in which RWD and RWE is collected. The guidance announced in this notice finalizes the draft guidance dated July 2020.

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 ''Use of Real-World Data and Real-World Evidence to Support Effectiveness of New Animal Drugs.'' 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 FDA's guidance entitled ''Use of Real-World Data and Real-World Evidence to Support Effectiveness of New Animal Drugs''

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, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 29, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–21687 Filed 10–5–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Personalized Tumor Vaccine and Use Thereof for Cancer Immunotherapy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the (U.S.) Patents and Patent Applications listed in the Supplementary Information section of this notice to NE1 Inc, located at 515 Madison Avenue, 8th Fl. Suite 8096, New York, NY 10022.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before October 21, 2021 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Dr. Berna Uygur, Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)-276–5530; Email: *berna.uygur@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

(United States Provisional) Patent Application No. 62/946,934, filed on December 11, 2019 and entitled ''Personalized Tumor Vaccine and Use Thereof for Cancer Immunotherapy'' [HHS Reference No. E–003–2020/0–US–01]. (PCT) Patent Application No. PCT/US2020/064412, filed on December 11, 2020 and entitled ''Personalized Tumor Vaccine and Use Thereof for Cancer Immunotherapy'' [HHS Reference No. E–003–2020/0–PCT–02].

The patent rights in this invention are co-owned by (a) the United States of America, as represented by the Secretary, Department of Health and Human Services, (b) University of South Bohemia, and (c) NE1 Inc. The prospective exclusive license territory may be worldwide, and the field of use may be limited to: Development, manufacture, and commercialization of the MBTA Therapy Products, as claimed in the Licensed Patent Rights, for the treatment of cancer in humans.

This technology discloses ''MBTA Therapy Product(s)'' which are vaccine products comprising irradiated tumor cells pulsed with phagocytic agonists (Mannan-BAM, a polysaccharide derivative of mannan), TLR (Toll-like receptor) ligands, and Anti-CD40-monoclonal antibody. The MBTA Therapy Products may be used as personalized tumor vaccines to treat cancer.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 1, 2021.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2021–21845 Filed 10–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences.

Date: October 12, 2021.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27713 (Virtual Meeting).

Contact Person: Quentin Li, M.D., Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MSC K3–05, Research Triangle Park, NC 27709, 240–858–3914, *quentin.li@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 30, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–21793 Filed 10–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Initial Review Group; Pediatrics Study Section.

Date: October 7, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892, (301) 435–6916, *kielbj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: October 1, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–21855 Filed 10–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of T Cell Therapies for Mesothelin-Expressing Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Ares Immunotherapy, Inc. (''Ares''), a Delaware corporation.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before October 21, 2021 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)-276–5484; Email: *andy.burke@nih.gov*.

SUPPLEMENTARY INFORMATION:

Intellectual Property

E–078–2012: Anti-Mesothelin Chimeric Antigen Receptors

1. United States Provisional Patent Application No. 61/614,612 filed March 23, 2012 (NCI Reference E–078–2012–0–US–01);

2. PCT Patent Application No. PCT/US2013/028980 filed March 5, 2013 (NCI Reference E–078–2012–0–PCT–02);

3. Australian Patent No. 2013235726 issued August 3, 2017 (NCI Reference E–078–2012–0–AU–03);

4. Canadian Patent No. 2,868,121 issued June 1, 2021 (NCI Reference E–078–2012–0–CA–04);

5. European Patent No. 2828290 issued August 15, 2018 (NCI Reference E–078–2012–0–EP–05);

a. Validated in: FR, DE and UK

6. United States Patent No. 9,359,447 issued June 7, 2016 (NCI Reference E–078–2012–0–US–06);

7. European Patent No. 3421489 issued May 5, 2021 (NCI Reference E–078–2012–0–EP–07); and

a. Validated in: FR, DE and UK

8. Canadian Patent Application No. 3,116,051 filed April 23, 2021 (NCI Reference E–078–2012–0–CA–11).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

''Development, manufacture and commercialization of T cell therapy products engineered to express the chimeric antigen receptor(s) claimed in the Licensed Patent Rights for the treatment of mesothelin-expressing cancers in humans.''

The E–078–2012 invention family discloses certain chimeric antigen receptors (CARs) targeting mesothelin. CARs are synthetic proteins comprised of extracellular antigen binding domains and intracellular signaling domains designed to activate the cytolytic functions of CAR-expressing T cells upon antigen recognition.

Mesothelin is a cell surface protein. Its expression is primarily restricted to mesothelial cells of the pleura, peritoneum, and pericardium; however, research has demonstrated that several cancers, including malignant mesothelioma, pancreatic, ovarian and lung adenocarcinoma, also express mesothelin under certain circumstances. Due to its limited expression in normal tissues, CARs targeting mesothelin may be useful in the development of T cell therapy products for the treatment of select cancers.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the

Freedom of Information Act, 5 U.S.C. 552.

Dated: October 1, 2021.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2021–21846 Filed 10–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; RFP NIHAI75N93021R00010 Division of Microbiology and Infectious Diseases: Regulatory Affairs Support (N01).

Date: November 2, 2021.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 1, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–21839 Filed 10–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–153: Science Education Partnership Award (SEPA) (R25).

Date: November 4–5, 2021.

Time: 11:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5144, MSC 7840, Bethesda, MD 20892, (301) 402–4179, *thomas.cho@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Health Informatics.

Date: November 8, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *Jacinta.bronte-tinkew@nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: November 8–10, 2021.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments (CDT).

Date: November 8–9, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victor A. Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2, Bethesda, MD 20892, (301) 867–5309, *victor.panchenko@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Antiviral Drug Discovery and Mechanisms of Resistance.

Date: November 9–10, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9448, *shinako.takada@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skin Biology, Rheumatology, and Inflammation.

Date: November 9, 2021.

Time: 12:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, (301) 435–1787, *srikanth.ranganathan@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bioengineering Science and Technology.

Date: November 12, 2021.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology and Trauma.

Date: November 12, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pain, Chemosensation and Sensory Motor Neurobiology.

Date: November 12, 2021.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8515, *janzr2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 1, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–21836 Filed 10–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0024]

Entry/Immediate Delivery Application and ACE Cargo Release

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision 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 December 6, 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 1651–0024 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: Entry/Immediate Delivery Application and ACE Cargo Release.

OMB Number: 1651–0024.

Form Number: CBP Forms 3461 and 3461 ALT.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including ''entry'' pursuant to 19 U.S.C. 1484, and ''immediate delivery'' pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461, Entry/Immediate Delivery, and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise.

CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 142.3, 142.16, 141.22, and 141.24. The forms and instructions for Form 3461 are accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3461&=Apply.*

Ace Cargo Release (formerly referred to as ''Simplified Entry'') is a program for ACE entry summary filers in which importers or brokers may file ACE Cargo Release data in lieu of filing the CBP Form 3461. This data consists of 12 required elements: Importer of record; buyer name and address; buyer employer identification number (consignee number), seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. The four optional data elements are: The container stuffing location, consolidator name and address, ship to party name and address, and the three Global Business Identifier (GBI) identifiers: (20-Digit Legal Entity Identifier (LEI), 9-digit Data Universal Numbering System (DUNS),

and 13-digit Global Local Number (GLN)) for the entry filer and the manufacturer/producer, seller and shipper, and optionally, for the exporter, distributor and packager. The GBI identifiers are the new optional data elements that are being collected to better identify the legal entity that is interacting with CBP. The data collected under the ACE Cargo Release program is intended to reduce transaction costs, expedite cargo release, and enhance cargo security. ACE Cargo Release filing minimizes the redundancy of data submitted by the filer to CBP through receiving carrier data from the carrier. This design allows the participants to file earlier in the transportation flow. Guidance on using ACE Cargo Release may be found at *http://www.cbp.gov/trade/ace/features*.

It should be noted that ACE Cargo Release was previously called Simplified Entry.

Type of Information Collection: Form 3461 Entry/Immediate Delivery (Paper Only).

Estimated Number of Respondents: 12,307.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 12,307.

Estimated Time per Response: 15 minutes (0.25 hours).

Estimated Total Annual Burden Hours: 3,077.

Type of Information Collection: ACE Cargo Release: Form 3461, 3461ALT (Electronic Submission).

Estimated Number of Respondents: 9,810.

Estimated Number of Annual Responses per Respondent: 2,994.

Estimated Number of Total Annual Responses: 29,371,140.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 4,875,609.

Dated: September 30, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–21774 Filed 10–5–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0NEW]

Global Business Identifier (GBI)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; This is a new 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 December 6, 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 1651–0NEW 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: Global Business Identifier (GBI).

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: This is a new collection of information.

Type of Review: New Information Collection.

Affected Public: Businesses.

Abstract: U.S. Customs and Border Protection (CBP) is launching a Global Business Identifier (GBI) Evaluative Proof of Concept (EPoC) which aims to determine a single identifier solution that will uniquely discern main legal entity and ownership; specific business and global locations; and supply chain roles and functions. Entry filers must request permission to participate in the GBI EPoC and must obtain and submit all three GBI identifiers as part of the application. The identifiers provide additional information about trade entities and supply chain locations associated with U.S. imports, to CBP for enrollment into the GBI EPoC and, if selected, during the Entry process. The three identifiers are:

- Legal Entity Identifier (LEI)—owned and managed by the Global Legal Entity Identifier Foundation (GLEIF)
- Global Location Number (GLN)—owned and managed by GS1
- Data Universal Numbering System (DUNS)—owned and managed by Dun & Bradstreet (D&B)

GBI EPoC participants will also provide applicant information: Company/entity legal name, legal entity headquarters and/or manufacturing site address, business phone number (associated with provided address), company website, Manufacture/Shipper Identification Code (MID), and Authorized Economic Operator (AEO) identification number (optional).

Automated Broker Interface (ABI) filers (including brokers and self-filers)

will be required to complete a GBI enrollment process, via ABI, prior to submitting the identifiers on an electronic entry (CBP Form 3461). Filers are responsible for the associated costs to obtain all three identifiers and will submit each identifier for the following supply chain roles:

- Manufacturer/Producer (required)
- Shipper (required)
- Seller (required)
- Exporter (optional)
- Distributer (optional)
- Packager (optional)

Section 484 of the Tariff Act of 1930, as amended (19 U.S. Code 1484) and Part 141, Code of Federal Regulations, Title 19 (19 CFR part 141), pertain to the entry of merchandise and authorize CBP to require information that is necessary for CBP to determine whether merchandise may be released from CBP custody. Provisions of the U.S. Code and CBP regulations, in various parts and related to various types of merchandise, specify information that is required for entry. For reference, Part 163, Code of Federal Regulations, Title 19 (19 CFR part 163 Appendix A) refers to a wide variety of regulatory provisions for certain information that may be required by CBP.

By testing the identifiers CBP will take its first step in determining whether to amend regulations to mandate the GBI solution. Furthermore, CBP will understand the utility of collecting and/or combining the identifiers' data and will be able to make an informed decision on whether to mandate the use of the GBI solution as an alternative for the Manufacturer/Shipper Identification Code (MID).

Type of Information Collection: Electronic Submission of GBI Data and Enrollment Information.

Estimated Number of Respondents: 100.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 100.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 17.

Dated: September 30, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–21775 Filed 10–5–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0060]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Medical Certification for Disability Exceptions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 5, 2021.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0021. All submissions received must include the OMB Control Number 1615–0060 in the body of the letter, the agency name and Docket ID USCIS–2008–0021.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 21, 2021, at 86 FR 20704, allowing for a 60-day public comment period. USCIS received 41 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0021 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–648; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the Form N–648 to substantiate a claim for an exception to the requirements of section 312(a) of the Immigration and Nationality Act. By certifying Form N–648, the doctor states that an applicant filing an Application for Naturalization, Form N–400, is unable to complete the English and/or civics requirements because of a physical or developmental disability or mental impairment(s).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–648 Medical Professional is 19,527 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection N–648 Applicant is 19,527 and the estimated hour burden per response is 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 195,335 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $17,775,089.

Dated: September 30, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–21759 Filed 10–5–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–57]

30-Day Notice of Proposed Information Collection: Application for Displacement/Relocation/Temporary Relocation Assistance for Persons; OMB Control No.: 2506–0016

AGENCY: Office of the Chief Information Officer, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* November 5, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 21, 2021 at 86 FR 38495.

A. Overview of Information Collection

Title of Information Collection: Application for Displacement/Relocation/Temporary Relocation Assistance for Persons.

OMB Approval Number: 2506–0016.

Type of Request: Extension of currently approved collection.

Form Number: HUD–40030, HUD–40054, HUD–40055, HUD–40056, HUD–40057, HUD–40058, HUD–40061, and HUD–40072.

Description of the need for the information and proposed use:

Application for displacement/relocation assistance for persons (families, individuals, businesses, nonprofit organizations and farms) displaced by, or temporarily relocated for, certain HUD programs. No changes are being made for Forms HUD–40030, HUD–40054, 40055, HUD–40056, HUD–40057, HUD–40058, HUD–40061, and HUD–40072.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD 40054	12,000.00	1.00	12,000.00	0.5	6,000.00	$26.09	$156,540.00
HUD 40055	400.00	1.00	400.00	1.5	600.00	26.09	15,654.00
HUD 40056	400.00	1.00	400.00	1.0	400.00	26.09	10,436.00
HUD 40030	25,000.00	1.00	25,000.00	1.0	25,000.00	26.09	652,250.00
HUD 40057	1,250.00	1.00	1,250.00	1.0	1,250.00	26.09	32,612.50
HUD 40058	8,750.00	1.00	8,750.00	1.0	8,750.00	26.09	228,287.50
HUD 40072	2,000.00	1.00	2,000.00	1.0	2,000.00	26.09	52,180.00
HUD 40061	12,000.00	1.00	12,000.00	1.0	12,000.00	26.09	313,080.00
Total	61,800.00	1.00	61,800.00		56,000.00	26.09	1,461,040.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–21784 Filed 10–5–21; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: October 4, 2021, 11:30 a.m. ET.

PLACE: Via tele-conference.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED:

- Call to order
- Vote on Interim President/CEO
- Adjournment

Portions Open to the Public

- Meeting of the IAF Board of Director

Portions Closed to the Public

- Executive session closed to the public as provided for by 22 CFR 1004.4(b)

CONTACT PERSON FOR MORE INFORMATION: Aswathi Zachariah, General Counsel, (202) 683–7118.

For Dial-in Information Contact: Karen Vargas, Board Liaison, (202) 524–8869.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Aswathi Zachariah,

General Counsel.

[FR Doc. 2021–21930 Filed 10–4–21; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G; Docket No. DOI–2021–0010]

Tribal Listening Sessions on Climate Change and Discretionary Grants

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Tribal listening sessions.

SUMMARY: The Department invites representatives of federally recognized Tribes to participate in three upcoming virtual listening sessions focused on climate change and Tribal Nations and two upcoming virtual listening sessions focused on Bureau of Indian Affairs (BIA) discretionary grants for Tribes. The Department also invites Tribal youth to the first scheduled climate listening session, which is focused on Tribal youth and climate. Climate change, equity, and environmental justice are among this Administration's top priorities. The Department would like to ensure that its efforts and the initiatives it develops to meet these priorities and to effectively administer discretionary grants programs are shaped and designed based on feedback and information received from across Indian Country and Alaska Native Villages.

DATES: Please see the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the sessions.

ADDRESSES: Please see the website for updates *https://www.bia.gov/bia/ots/tribal-climate-resilience-program* for information on joining the Tribal climate sessions. Please see the website *https://www.doi.gov/ppa/equity/13985* for updates and information on joining the Tribal discretionary grants sessions. You may submit your comments though the Federal eRulemaking Portal: *https://www.regulations.gov.* Search by docket number ''DOI–2021–0010'' and follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Rachael Novak, BIA Tribal Resilience Coordinator, (505) 563–5253, *Tribal.Climate@bia.gov.*

SUPPLEMENTARY INFORMATION: The Department of the Interior (DOI) is pleased to announce three upcoming virtual listening sessions for Tribes focused on climate change and Tribal Nations and two upcoming virtual listening sessions for Tribes focused on Tribal discretionary grants. Climate change, equity, and environmental justice are among this Administration's top priorities. The Department would like to ensure that its efforts and the initiatives it develops to meet these priorities are shaped and designed based on feedback and information received from across Indian Country and Alaska Native Villages. Such initiatives include the Department's Equity Plan, Civilian Climate Corps, the Indian Youth Service Corps, Tribal climate science technical support, climate adaptation and resilience planning and implementation grants, economic development grants, and many more. These listening sessions will inform DOI-wide and Bureau of Indian Affairs (BIA)-led efforts.

Tribes are eligible for a range of discretionary grant programs administered by the BIA, Bureau of Indian Education, and other DOI bureaus. These grant programs can provide funding to support Tribal operations, economic development, education, resilience, preservation of historic places, and other key functions. By identifying and addressing barriers to accessing DOI discretionary grants, the Department can better support Tribes in improving government infrastructure, community infrastructure, education, job training, climate adaptation planning and implementation capacity, and employment opportunities along with other components of long-term sustainable development that work to improve quality of life for their members. These listening sessions will inform DOI efforts to improve access to Tribal discretionary grants.

We are scheduling the following listening sessions to create opportunities for sharing and dialogue about these programs and to learn what Tribes see as important opportunities. Each session has a different focus, as noted below. The following general questions for each session are provided to facilitate discussion during the sessions. More specific questions are provided on the BIA Tribal Climate Resilience website: *https://www.bia.gov/bia/ots/tribal-climate-resilience-program* and the Department's website pertaining to Executive Order 13985: *https://www.doi.gov/ppa/equity/13985.*

Session 1: Tribal Youth and Climate

Date: October 13, 2021
Time: 3 p.m.–5 p.m. ET

Note: We particularly invite Tribal youth to this session. There is a downloadable parental/guardian consent form at the BIA Tribal Climate website above for participation of minors. Please submit completed forms to *Tribal.Climate@bia.gov.*

Questions for discussion:

1. How is climate change impacting your Tribal Nation and your community?

2. How can you help connect people of all generations to work together to solve community problems and address climate challenges with honor & respect for the land and environment? And how can DOI help empower you and your Tribal Nation in these efforts?

Session 2: Part I—Tribal Climate Adaptation and Mitigation

Date: October 28, 2021
Time: 12 p.m.–1 p.m. ET

Questions for discussion:

1. What are your top priorities surrounding climate adaptation, mitigation, and implementation, and what are the science needs to support these priorities?

2. Do you have a climate adaptation plan(s) for your Tribe/Tribal Program? How are they being implemented? What are the barriers to implementing them?

Session 2: Part II—Relocation, Managed Retreat, Protect-in-Place for Lower 48 Tribes

Date: October 28, 2021
Time: 2 p.m.–3 p.m. for Tribes in Eastern, Midwest, Great Plains, Eastern Oklahoma, and Southern Plains Region, 3 p.m.–4 p.m. Tribes in Rocky Mountain, Southwest, Western, Navajo, Pacific, and Northwest Regions

1. Is your Tribe dealing with more frequent and severe climate change impacts (*e.g.,* flooding, erosion, sea level rise, etc.) that are likely to require partial or complete infrastructure relocation?

2. If so, what are the resources (financial, technical, etc.) needed to assist the process? What are the barriers?

Session 3: Relocation, Managed Retreat, and Protect-in-Place Issues in Alaska

Date: To be held during the BIA Providers' Conference the week of November 29, 2021
Time: To be announced (see *https://www.bia.gov/bia/ots/tribal-climate-resilience-program* for updates)

Questions for discussion:

1. What resources have you successfully obtained thus far? What successes have you had?

2. What challenges have you experienced? What assistance do you need from the Federal government to address this issue?

Sessions 4 & 5: Tribal Discretionary Grants

Date: October 20, 2021
Time: 8 p.m.–10 p.m. ET

Questions for discussion:

1. If you have applied for a discretionary grant administered by DOI in the past, what has been your experience?

2. If you have not applied for discretionary grants administered by DOI, why not? What would make it easier for you access grant opportunities with DOI?

3. What are the barriers to applying for grant opportunities with DOI?

4. How can DOI remove or reduce barriers that Tribal Nations and communities face when they participate or attempt to participate in DOI-administered grant opportunities?

Session 5: Tribal Discretionary Grants

Date: October 27, 2021
Time: 5 p.m.–7 p.m. ET

Questions for discussion:

1. If you have applied for a discretionary grant administered by DOI in the past, what has been your experience?

2. If you have not applied for discretionary grants administered by DOI, why not? What would make it easier for you access grant opportunities with DOI?

3. What are the barriers to applying for grant opportunities with DOI?

4. How can DOI remove or reduce barriers that Tribal Nations and communities face when they participate or attempt to participate in DOI-administered grant opportunities?

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–21804 Filed 10–5–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of Class III tribal gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

DATES: *Applicable Date:* This notice is applicable October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Tearanie McCain, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710 (d) (2) (B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register** is sufficient to meet the requirements of 25 U.S.C. 2710 (d) (2) (B). Beginning September 30, 2021, the NIGC will publish the notice of approved gaming ordinances quarterly, by March 31, June 30, September 30, and December 31 of each year.

Every approved tribal gaming ordinance, every approved ordinance amendment, and the approval thereof, will be posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances within five (5) business days of approval. Also, the Commission will make copies of approved Class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Tearanie McCain, C/O Department of the Interior, 1849 C Street NW, MS #1621, Washington, DC 20240.

The following constitutes a consolidated list of all Tribes for which the Chairman has approved tribal gaming ordinances authorizing Class III gaming.

1. Absentee-Shawnee Tribe of Indian of Oklahoma
2. Agua Caliente Band of Cahuilla Indians
3. Ak-Chin Indian Community of the Maricopa Indian Reservation
4. Alabama-Quassarte Tribal Town
5. Alturas Indian Rancheria
6. Apache Tribe of Oklahoma
7. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation
8. Augustine Band of Cahuilla Indians
9. Bad River Band of Lake Superior Tribe of Chippewa Indians

10. Barona Group of Captain Grande Band of Mission Indians
11. Bay Mills Indian Community
12. Bear River Band of Rohnerville Rancheria
13. Berry Creek Rancheria of Tyme Maidu Indians
14. Big Lagoon Rancheria
15. Big Pine Band of Owens Valley Paiute Shoshone Indians
16. Big Sandy Rancheria Band of Western Mono Indians
17. Big Valley Band of Pomo Indians
18. Bishop Paiute Tribe
19. Blackfeet Tribe
20. Blue Lake Rancheria of California
21. Bois Forte Band of the Minnesota Chippewa Tribe
22. Buena Vista Rancheria of Me-Wuk Indians
23. Burns Paiute Tribe
24. Cabazon Band of Mission Indians
25. Cachil DeHe Band of Wintun Indians of the Colusa Indian Community
26. Caddo Nation of Oklahoma
27. Cahto Indian Tribe of the Laytonville Rancheria
28. Cahuilla Band of Mission Indians
29. California Valley Miwok Tribe
30. Campo Band of Diegueno Mission Indians
31. Catawba Indian Nation
32. Chemehuevi Indian Tribe
33. Cher-Ae Heights Indian Community of the Trinidad Rancheria
34. Cherokee Nation of Oklahoma
35. Cheyenne and Arapaho Tribes
36. Cheyenne River Sioux Tribe
37. Chickasaw Nation of Oklahoma
38. Chicken Ranch Rancheria of Me-Wuk Indians
39. Chippewa-Cree Tribe of the Rocky Boy's Reservation
40. Chitimacha Tribe of Louisiana
41. Choctaw Nation of Oklahoma
42. Citizen Potawatomi Nation
43. Cloverdale Rancheria of Pomo Indians
44. Cocopah Indian Tribe
45. Coeur d'Alene Tribe
46. Colorado River Indian Tribes
47. Comanche Nation of Oklahoma
48. Confederated Salish and Kootenai Tribes of the Flathead Reservation
49. Confederated Tribes and Bands of the Yakama Nation
50. Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon
51. Confederated Tribes of the Chehalis Reservation
52. Confederated Tribes of the Colville Reservation
53. Confederated Tribes of the Grand Ronde Community of Oregon
54. Confederated Tribes of Siletz Indians of Oregon
55. Confederated Tribes of the Umatilla Reservation
56. Confederated Tribes of the Warm Springs Reservation
57. Coquille Indian Tribe
58. Coushatta Tribe of Louisiana
59. Cow Creek Band of Umpqua Indians of Oregon
60. Cowlitz Indian Tribe
61. Coyote Valley Band of Pomo Indians of California
62. Crow Creek Sioux Tribe
63. Crow Indian Tribe of Montana
64. Delaware Tribe of Western Oklahoma
65. Delaware Tribe of Indians
66. Dry Creek Rancheria of Pomo Indians of California
67. Eastern Band of Cherokee Indians
68. Eastern Shawnee Tribe of Oklahoma
69. Eastern Shoshone Tribe of the Wind River Indian Reservation
70. Elem Indian Colony of Pomo Indians
71. Elk Valley Rancheria
72. Ely Shoshone Tribe of Nevada
73. Enterprise Rancheria of the Maidu Indians of California
74. Ewiiaapaayp Band of Kumeyaay Indians
75. Fallon Paiute-Shoshone Tribes
76. Federated Indians of Graton Rancheria
77. Flandreau Santee Sioux Tribe of South Dakota
78. Fond du Lac Band of Lake Superior Chippewa
79. Forest County Potawatomi Community
80. Fort Belknap Indian Community
81. Fort Independence Indian Community of Paiute Indians
82. Fort McDermitt Paiute-Shoshone Tribe of Nevada and Oregon
83. Fort McDowell Yavapai Nation
84. Fort Mojave Indian Tribe of Arizona, California and Nevada
85. Fort Sill Apache Tribe of Oklahoma
86. Gila River Indian Community
87. Grand Portage Band of Chippewa Indians
88. Grand Traverse Band of Ottawa and Chippewa Indians
89. Greenville Rancheria of Maidu Indians of California
90. Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
91. Guidiville Band of Pomo Indians
92. Habematolel Pomo of Upper Lake
93. Hannahville Indian Community
94. Ho-Chunk Nation of Wisconsin
95. Hoopa Valley Tribe
96. Hopland Band of Pomo Indians
97. Hualapai Indian Tribe
98. Huron Potawatomi, Inc.
99. Iipay Nation of Santa Ysabel of California
100. Ione Band of Miwok Indians
101. Iowa Tribe of Kansas and Nebraska
102. Iowa Tribe of Oklahoma
103. Jackson Rancheria Band of Miwuk Indians
104. Jamestown S'Klallam Tribe of Washington
105. Jamul Band of Mission Indians
106. Jena Band of Choctaw Indians
107. Jicarilla Apache Nation
108. Kaibab Band of Paiute Indians
109. Kalispel Tribe of Indians
110. Karuk Tribe
111. Kashia Band of Pomo Indians of the Stewarts Point Reservation
112. Kaw Nation
113. Keweenaw Bay Indian Community
114. Kialegee Tribal Town
115. Kickapoo Traditional Tribe of Texas
116. Kickapoo Tribe of Indians in Kansas
117. Kickapoo Tribe of Oklahoma
118. Kiowa Tribe of Oklahoma
119. Klamath Tribes
120. Klawock Cooperative Association
121. Kootenai Tribe of Idaho
122. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
123. Lac du Flambeau Band of Lake Superior Chippewa Indians
124. Lac Vieux Desert Band of Lake Superior Chippewa Indians
125. La Jolla Band of Luiseno Indians
126. La Posta Band of Mission Indians
127. Las Vegas Paiute Tribe
128. Leech Lake Band of Chippewa Indians
129. Little River Band of Ottawa Indians
130. Little Traverse Bay Bands of Odawa Indians
131. Lower Brule Sioux Tribe
132. Lower Elwha Klallam Tribe
133. Lower Sioux Indian Community
134. Lummi Indian Tribe
135. Lytton Rancheria of California
136. Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria
137. Manzanita Band of Mission Indians
138. Mashantucket Pequot Tribe
139. Mashpee Wampanoag Tribe
140. Match-E-Be-Nash-She-Wish Band of the Potawatomi Indians of Michigan
141. Mechoopda Indian Tribe of Chico Rancheria
142. Menominee Indian Tribe of Wisconsin
143. Mescalero Apache Tribe
144. Miami Tribe of Oklahoma
145. Middletown Rancheria of Pomo Indians
146. Mille Lacs Band of Ojibwe
147. Mississippi Band of Choctaw Indians
148. Moapa Band of Paiute Indians
149. Modoc Tribe of Oklahoma
150. Mohegan Indian Tribe of Connecticut
151. Mooretown Rancheria of Maidu Indians
152. Morongo Band of Mission Indians
153. Muckleshoot Indian Tribe
154. Muscogee (Creek) Nation
155. Narragansett Indian Tribe
156. Navajo Nation
157. Nez Perce Tribe
158. Nisqually Indian Tribe
159. Nooksack Indian Tribe
160. North Fork Rancheria of Mono Indians of California
161. Northern Arapaho Tribe of the Wind River Indians
162. Northern Cheyenne Tribe
163. Nottawaseppi Huron Band of Potawatomi
164. Oglala Sioux Tribe
165. Ohkay Owingeh Pueblo of San Juan
166. Omaha Tribe of Nebraska
167. Oneida Nation of New York
168. Oneida Tribe of Indians of Wisconsin
169. Osage Nation
170. Otoe-Missouri Tribe of Indians
171. Ottawa Tribe of Oklahoma
172. Paiute-Shoshone Indians of the Bishop Community
173. Pala Band of Luiseno Mission Indians
174. Pascua Yaqui Tribe of Arizona
175. Paskenta Band of Nomlaki Indians
176. Pauma Band of Mission Indians
177. Pawnee Nation of Oklahoma
178. Pechanga Band of Mission Indians
179. Peoria Tribe of Indians of Oklahoma
180. Picayune Rancheria of Chukchansi Indians
181. Pinoleville Band of Pomo Indians
182. Pit River Tribe
183. Poarch Band Creek Indians
184. Pokagon Band of Potawatomi Indians of Michigan
185. Ponca Tribe of Oklahoma
186. Ponca Tribe of Nebraska
187. Port Gamble S'Klallam Tribe
188. Prairie Band of Potawatomi Nation

189. Prairie Island Indian Community
190. Pueblo of Acoma
191. Pueblo of Isleta
192. Pueblo of Jemez
193. Pueblo of Laguna
194. Pueblo of Nambe
195. Pueblo of Picuris
196. Pueblo of Pojoaque
197. Pueblo of San Felipe
198. Pueblo of Sandia
199. Pueblo of Santa Ana
200. Pueblo of Santa Clara
201. Pueblo of Santo Domingo
202. Pueblo of Taos
203. Pueblo of Tesuque
204. Puyallup Tribe of Indians
205. Pyramid Lake Paiute Tribe
206. Quapaw Tribe of Indians
207. Quartz Valley Indian Community
208. Quechan Tribe of Fort Yuma Indian Reservation
209. Quileute Tribe
210. Quinault Indian Nation
211. Red Cliff Band of Lake Superior Chippewa Indians
212. Red Cliff, Sokaogon Chippewa and Lac Courte Oreilles Band
213. Red Lake Band of Chippewa Indians
214. Redding Rancheria
215. Redwood Valley Rancheria of Pomo Indians
216. Reno-Sparks Indian Colony
217. Resighini Rancheria of Coast Indian Community
218. Rincon Band of Luiseno Mission Indians
219. Robinson Rancheria of Pomo Indians
220. Rosebud Sioux Tribe
221. Round Valley Indian Tribe
222. Sac & Fox Nation of Oklahoma
223. Sac & Fox Tribe of Mississippi in Iowa
224. Sac & Fox Nation of Missouri in Kansas and Nebraska
225. Saginaw Chippewa Indian Tribe of Michigan
226. Salt River Pima-Maricopa Indian Community
227. Samish Indian Tribe
228. San Carlos Apache Tribe
229. San Manual Band of Mission Indians
230. San Pasqual Band of Diegueno Mission Indians
231. Santa Rosa Rancheria Tachi-Yokut Tribe
232. Santa Ynez Band of Chumash Mission Indians
233. Santa Ysabel Band of Diegueno Mission Indians
234. Sauk-Suiattle Indian Tribe
235. Sault Ste. Marie Tribe of Chippewa Indians
236. Scotts Valley Band of Pomo Indians
237. Seminole Nation of Oklahoma
238. Seminole Tribe of Florida
239. Seneca Nation of Indians of New York
240. Seneca-Cayuga Tribe of Oklahoma
241. Shakopee Mdewakanton Sioux Community
242. Shawnee Tribe
243. Sherwood Valley Rancheria of Pomo Indians
244. Shingle Springs Band of Miwuk Indians
245. Shinnecock Indian Nation
246. Shoalwater Bay Indian Tribe
247. Shoshone Tribe of the Wind River Reservation
248. Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho
249. Shoshone-Paiute Tribe of the Duck Valley Indian Reservation
250. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
251. Skokomish Indian Tribe
252. Smith River Rancheria
253. Snoqualmie Tribe
254. Soboba Band of Luiseno Indians
255. Sokaogon Chippewa Community
256. Southern Ute Indian Tribe
257. Sprite Lake Tribe
258. Spokane Tribe of Indians
259. Squaxin Island Tribe
260. St. Croix Chippewa Indians of Wisconsin
261. St. Regis Mohawk Tribe
262. Standing Rock Sioux Tribe
263. Stillaguamish Tribe of Indians
264. Stockbridge-Munsee Community
265. Suquamish Tribe of the Port Madison Reservation
266. Susanville Indian Rancheria
267. Swinomish Indian Tribal Community
268. Sycuan Band of Diegueno Mission Indians
269. Table Mountain Rancheria
270. Te-Moak Tribe of Western Shoshone Indians of Nevada
271. Thlopthlocco Tribal Town
272. Three Affiliated Tribes of the Fort Berthold Reservation
273. Timbisha Shoshone Tribe
274. Tohono O'odham Nation
275. Tolowa Dee-ni' Nation
276. Tonkawa Tribe of Oklahoma
277. Tonto Apache Tribe
278. Torres Martinez Desert Cahuilla Indians
279. Tulalip Tribes of Washington
280. Tule River Tribe
281. Tunica-Biloxi Indians of Louisiana
282. Tuolumne Band of Me-Wuk Indians
283. Turtle Mountain Band of Chippewa Indians
284. Twenty-Nine Palms Band of Mission Indians
285. United Auburn Indian Community
286. Upper Sioux Community
287. Upper Skagit Indian Tribe of Washington
288. Ute Mountain Ute Tribe
289. U-tu-Utu-Gwaitu Paiute Tribe of Benton Paiute Reservation
290. Viejas Band of Kumeyaay Indians
291. Wampanoag Tribe of Gay Head
292. Washoe Tribe of Nevada and California
293. White Earth Band of Chippewa Indians
294. White Mountain Apache Tribe
295. Wichita and Affiliated Tribes of Oklahoma
296. Wilton Rancheria
297. Winnebago Tribe of Nebraska
298. Wiyot Tribe of Table Bluff Reservation
299. Wyandotte Nation of Oklahoma
300. Yankton Sioux Tribe
301. Yavapai Apache Nation of the Camp Verde Indian Reservation
302. Yavapai-Prescott Indian Tribe
303. Yerington Paiute Tribe
304. Yocha-De-He Wintun Nation
305. Yurok Tribe

National Indian Gaming Commission.

E. Sequoyah Simermeyer,

Chairman.

[FR Doc. 2021–21854 Filed 10–5–21; 8:45 am]

BILLING CODE 7565–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–32765; PPWOCRADI0, 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 September 25, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by October 21, 2021.

ADDRESSES: Comments are encouraged to be submitted elect0ronically 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 September 25, 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:

NEW YORK

Erie County

Continental Baking Company Factory, 356 Fougeron St., Buffalo, SG100007098
St. John Kanty Roman Catholic Church Complex, 101 Swinburne St., Buffalo, SG100007100

Franklin County

Church of the Ascension Chapel and Rectory, 32 and 81 Cty. Rd. 46, Saranac Inn, SG100007097

Herkimer County

Van Slyke House, 918 NY 5S, German Falls, SG100007104

Kings County

St. Peter's Protestant Episcopal Church, 355 State St., Brooklyn, SG100007102

Suffolk County

St. Paul's Methodist Episcopal Church, 270 Main St., Northport, SG100007101

Ulster County

Asbury Historic District, Old King's Hwy., West Camp, Schoolhouse, Wilhelm, and Charles Smith Rds. Saugerties, SG100007096
Kingston Gas and Electric Co. Building, 609–611 Broadway, Kingston, SG100007103
Warren County, Mountainside Free Library, 3090 NY 9L, Queensbury, SG100007099

PENNSYLVANIA

Allegheny County

Centre Avenue YMCA, 2621 Centre Ave., Pittsburgh, SG100007092
Jones and Laughlin Steel Company Building, 200 Ross St., Pittsburgh, SG100007093

Philadelphia County

Sandoz Chemical Works, 2215 East Tioga St., Philadelphia, SG100007094
Richmond Station, Philadelphia Electric Company, 4101 North Delaware Ave., Philadelphia, SG100007095

UTAH

Salt Lake County

Mexican Branch LDS Meetinghouse, (Historic Latinx Resources in Utah, 1776 to 1942 MPS), 232 West 800 South, Salt Lake City, MP100007106

Weber County

Rushmer Building, (Commercial and Industrial Properties of Ogden, Utah, 1845–1975 MPS), 2434–2436 Washington Blvd., Ogden, MP100007109

Additional documentation has been received for the following resources:

FLORIDA

Duval County

Downtown Jacksonville Historic District (Additional Documentation), Roughly bounded by North Pearl, Beaver, and North Catherine Sts., Independent and Courthouse Drs., Jacksonville, AD16000212

VIRGINIA

Fauquier County

Upperville Historic District (Additional Documentation), Along US 50/John S. Mosby Hwy. intersecting Patrick St., Delaplane Grade Rd., Parker and Lafayette Sts., Poplar Row and Crofton Lns., Upper Rd., Walnut St., Brooks Cluster Cir., Upperville, AD72001394

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 25, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–21780 Filed 10–5–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1071 (Third Review)]

Alloy Magnesium From China; Scheduling of Expedited Five-Rear Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on alloy magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 7, 2021.

FOR FURTHER INFORMATION CONTACT: Nayana Kollanthara (202–205–2043), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—On September 7, 2021, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 29280, June 1, 2021) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at 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.

Staff report—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on October 6, 2021. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 14, 2021 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 14, 2021. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response to its notice of institution filed by US Magnesium LLC, a domestic producer of magnesium, to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 1, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–21833 Filed 10–5–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0065]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Cyber Engagement & Intelligence Section, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until November 5, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the [Component or Office name], including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

Type of Information Collection: Extension, without change, of a currently approved collection.

The Title of the Form/Collection: Private Industry Feedback Survey.

The agency form number, if any, and the applicable component of the Department sponsoring the collection: There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Cyber Engagement & Intelligence Section.

Affected public who will be asked or required to respond, as well as a brief abstract: Private sector partners from private industry, non-profit organizations, and state and local government entities are requested to voluntarily respond to the private industry feedback survey.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Expected annual responses are 150 and the survey will take 10 minutes to complete.

An estimate of the total public burden (in hours) associated with the collection: There are an estimated 25 total annual burden hours associated with this collection. Estimated time spent on reviewing the survey responses in 100 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 1, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–21820 Filed 10–5–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 30, 2021, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Texas in the lawsuit entitled *United States* v. *WTG Gas Processing, LP; WTG South Permian Midstream LLC; and Davis Gas Processing, Inc.,* Civil Action No. 1:21–cv–182–H.

The United States filed this lawsuit under the Clean Air Act. The complaint seeks injunctive relief and civil penalties based on violations of Clean Air Act Section 112(r), 42 U.S.C. 7412(r), and the Chemical Accident Prevention Provisions promulgated at 40 CFR part 68, including violations that stem from releases of hazardous air pollutants. The alleged violations occurred at three natural gas processing and plants and one natural gas treatment plant owned and operated by the defendants, WTG Gas Processing, LP; WTG South Permian Midstream LLC; and Davis Gas Processing, Inc., in the cities of Coahoma, Midkiff, Cisco, and Big Lake, Texas. The consent decree requires the defendants to perform injunctive relief and pay a $3,125,000 civil penalty.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should

refer to *United States* v. *WTG Gas Processing, LP; WTG South Permian Midstream LLC; and Davis Gas Processing, Inc.,* D.J. Ref. No. 90–5–2–1–12232. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $16.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $13.00.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–21848 Filed 10–5–21; 8:45 am]

BILLING CODE 4410–15–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval, with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget extend its approval (with modifications), under the Paperwork Reduction Act of 1995, of the information collection related to PBGC's booklet, Qualified Domestic Relations Orders & PBGC. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by December 6, 2021.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to OMB control number 1212–0054 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to OMB control number 1212–0054. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Commenters should not include any information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (''confidential business information''). Submission of confidential business information without a request for protected treatment constitutes a waiver of any claims of confidentiality.

Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–229–4040 during normal business hours. TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–229–4040.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–229–3559. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–229–3559.)

SUPPLEMENTARY INFORMATION: A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order (QDRO).

When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. The requirements for submitting a domestic relations order and the contents of such orders are established by statute. The models and the guidance provided by PBGC assist parties by making it easier for them to comply with ERISA's QDRO requirements in plans trusteed by PBGC; they do not create any additional requirements and result in a reduction of the statutory burden.

The Office of Management and Budget (OMB) has approved the collection of information in PBGC's booklet, *Qualified Domestic Relations Orders & PBGC,* under control number 1212–0054 through February 28, 2022. PBGC intends to request that OMB extend approval of the collection of information with modifications for three years. 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.

PBGC is proposing modifications to the booklet including: Removing language concerning age 70½ for required minimum distributions because the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) changed the age for required minimum distributions in section 401(a)(9) of the Internal Revenue Code, clarifying that PBGC will delay commencement of benefits to a participant upon receipt of written notice of a pending domestic relations order (DRO), and increasing the amount of time parties have to contact PBGC to extend a hold after submission of a DRO or a non-DRO written notice of a

pending DRO. PBGC is also making other editorial changes to the QDRO booklet.

PBGC estimates that it will receive approximately 428 DROs each year. PBGC further estimates that the total average annual burden of this collection of information will be approximately 321 hours and $299,600.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC.

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2021–21762 Filed 10–5–21; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–137 and CP2021–144]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 8, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2021–137 and CP2021–144; *Filing Title:* USPS Request to Add Priority Mail Contract 723 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 30, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 8, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–21802 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 22, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 202 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–133, CP2021–138.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–21835 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 22, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 721 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–132, CP2021–137.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–21843 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 20, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 117 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–131, CP2021–136.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–21842 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 28, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 91 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–135, CP2021–142.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–21838 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 30, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 723 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–137, CP2021–144.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–21840 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 29, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 203 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–136, CP2021–143.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–21837 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 28, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 722 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2021–134, CP2021–141.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–21841 Filed 10–5–21; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93215; File No. SR–FINRA–2021–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 2231 (Customer Account Statements)

September 30, 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 September 29, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to: (1) Amend Rule 2231 (Customer Account Statements) to (a) add new supplementary materials pertaining to compliance with Rule 4311 (Carrying Agreements), the transmission of customer account statements to other persons or entities, the use of electronic media to satisfy delivery obligations, and compliance with Rule 3150 (Holding of Customer Mail); and (b) incorporate without substantive change specified provisions derived from Temporary Dual FINRA–NYSE Rule Interpretation 409T (Statements of Accounts to Customers) pertaining to information disclosed on customer account statements, externally held assets, use of logos and trademarks, and use of summary statements; (2) delete Temporary Dual FINRA–NYSE Rule 409T (Statements of Accounts to Customers) and Temporary Dual FINRA–NYSE Rule Interpretation 409T;[3] and (3) make other non-substantive and technical changes in Rule 2231 and to other FINRA rules due to this proposed rule change.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rule 2231 and NYSE Rule 409T govern the obligation of members to deliver customer account statements to customers. Specifically, Rule 2231 and NYSE Rule 409T require each ''general securities member''[4] and each member organization carrying customer accounts, respectively, to send account statements to customers at least quarterly showing security and money positions or account activity during the preceding quarter, except if carried on a Delivery versus Payment/Receive versus Payment (''DVP/RVP'') basis.

At the time FINRA adopted Rule 2231, along with NYSE Rule 409T and NYSE Rule Interpretation 409T (together, ''NYSE provisions''), among others, into the consolidated FINRA rulebook, FINRA noted that it would continue to review the substance of such rules and expected to propose substantive changes to some or all of the rules as part of future rulemakings.[5] As part of that effort and as described further below, FINRA is now proposing to amend Rule 2231 that would incorporate several existing provisions from the NYSE provisions. As a result of this proposed harmonization, the NYSE provisions would be deleted in their entirety.

Rule 2231 differs from the NYSE provisions in several ways. First, Rule 2231(c) sets forth requirements for disclosure of values for unlisted or illiquid direct participation programs or real estate investment trust securities. Neither NYSE Rule 409T nor NYSE Rule Interpretation 409T have a corresponding provision. Second, the NYSE provisions address the delivery of confirmations, account statements or other communications to third parties subject to specified conditions and exceptions. In addition, NYSE Rule 409T(g) provides that members carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them. Rule 2231 does not have similar provisions. Third, Rule 2231(d) expressly defines several terms (*e.g.,* ''account activity,'' ''DVP/RVP account,'' ''general securities member'') and Rule 2231(e) provides for exemptive relief from the rule. NYSE Rule 409T expressly defines only one term, ''DVP/RVP account,'' and does not provide for exemptive relief from the rule. Finally, unlike Rule 2231, NYSE Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As part of the process of completing a consolidated FINRA rulebook, FINRA adopted, without substantive changes, the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA–NYSE Member Rules Series. These NYSE rules and their corresponding interpretations now bear a ''T'' modifier after the rule and interpretation number to denote their placement in the Temporary Dual FINRA–NYSE Member Rules Series. The Temporary Dual FINRA–NYSE Member Rules Series apply only to those members of FINRA that are also members of the NYSE (''dual members''). The FINRA rules apply to all FINRA members, unless such rules have a more limited application by their terms. Among the remaining NASD rules was NASD Rule 2340 (Customer Account Statements), which was adopted, without substantive changes, as FINRA Rule 2231. Incorporated NYSE Rule 409 (Statements of Accounts to Customers) and Incorporated NYSE Rule Interpretation 409 (Statements of Accounts to Customers) were adopted, without substantive changes, under the Temporary Dual FINRA–NYSE Rules Series as Rule 409T and Interpretation 409T, respectively. *See* Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–009). For convenience, the rules and interpretations under the Temporary Dual FINRA–NYSE Member Rules Series are referred to as ''NYSE Rule'' and ''NYSE Rule Interpretation,'' as appropriate.

[4] Rule 2231(d) defines the term ''general securities member'' to mean ''any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3–1(a). Notwithstanding the foregoing definition, a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this section.''

[5] *See supra* note 3.

Interpretation 409T dictates the disclosures that must be made in a customer account statement, including for externally held assets, and requirements for use of third party agents, logos and trademarks, summary statements, and sets forth the standards for holding mail for a customer.

In light of these differences, FINRA is specifically proposing to: (a) Add as new Supplementary Materials .01 (Compliance with Rule 4311 (Carrying Agreements)), .02 (Transmission of Customer Account Statements to Other Persons or Entities), .03 (Use of Electronic Media to Satisfy Delivery Obligations), and .04 (Compliance with Rule 3150 (Holding of Customer Mail)); and (b) incorporate provisions derived from NYSE Rule Interpretation 409T, without substantive change, as Supplementary Materials .05 (Information to be Disclosed on Statement), .06 (Assets Externally Held), .07 (Use of Logos, Trademarks, etc.), and .08 (Use of Summary Statements).

Rule Filing History

In 2009, FINRA had filed with the SEC a proposed rule change to adopt then NASD Rule 2340 and legacy NYSE Rule 409, including its related interpretations, as Rule 2231 into the consolidated FINRA rulebook (''Initial Rule Filing'') as part of the process of developing the consolidated FINRA rulebook.[6] Among other things, the Initial Rule Filing had set forth a number of proposed supplementary materials, most of which were derived largely from then NYSE Rule Interpretation 409 to address customer account disclosures, including for externally held assets, and requirements for use of third party agents, logos and trademarks, summary statements, and holding customer mail.[7]

Among these proposed supplementary materials was one, based in part on legacy NYSE Rule 409(b), which would have required written instructions from the customer to address or send customer statements, confirmations or other communications relating to the customer's account to other persons or entities. However, unlike legacy NYSE Rule 409(b), the proposed supplementary material was silent on whether a firm would have to continue sending account statements to the customer. Commenters to the Initial Rule Filing expressed concerns relating to the need for written customer consent to transmit customer account statements to third parties and sought clarification on whether firms would be required to obtain written consent when complying with then NASD Rule 3050 (Transactions for or by Associated Persons) and then NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange).[8] In response to these comments, among others, FINRA amended the Initial Rule Filing in 2011 (''Amended Rule Filing'').[9] With respect to the transmission of customer account statements to third parties, FINRA had proposed clarifying that member firms would not be required to obtain prior written consent from their associated persons to send duplicate account statements or other communications with respect to such associated persons' accounts that were subject to then NASD Rule 3050 and NYSE Rule 407. To address concerns regarding potential fraud, especially with senior investors, where a third party receives the account statements in lieu of such customer, FINRA had also proposed clarifying that firms would have to continue to deliver account statements to customers, either in paper format or electronically, even when directed by the customer, in writing, to send statements to a third party. FINRA made this clarification in an effort to remain consistent with any SEC release, interpretation, ''no-action'' position or exemption issued by the SEC or its staff in the context of SEA Rule 10b–10 (Confirmation of transactions) that have established the policy that customers should continue to receive periodic account statements when not receiving immediate trade confirmations under SEA Rule 10b-10.[10] Further comments were received in response to the Amended Rule Filing. Commenters objected to the proposed requirement to deliver account statements to customers even when directed by customers, in writing, to send the statements to third parties. Some commenters believed that members should not be required to continue delivering account statements to customers, particularly where there was a power of attorney (''POA'') or incapacity. FINRA withdrew the filing to further consider the comments.[11]

To address the concerns raised in the prior filing, FINRA published *Regulatory Notice* 14–35 (September 2014) (''*Notice*'' or ''*Notice* 14–35 Proposal''), seeking comment on a revised proposal to transfer then NASD Rule 2340 and Incorporated NYSE Rule 409 and its related interpretations, largely unchanged, into the consolidated FINRA rulebook as Rule 2231. With respect to the proposed supplementary material pertaining to the transmission of customer account statements to other persons or entities, the *Notice* 14–35 Proposal set forth changes to that provision that aligned more closely with then NYSE Rule 409(b) and were intended to help ensure that a customer continues to receive the account statement even when such customer directs the firm to send the statement to a third party. As described further below, the proposed rule change differs in some respects from the terms set forth in the *Notice* 14–35 Proposal as to proposed Supplementary Material .02. In all other respects, subject to some technical changes, the proposed amendments to Rule 2231 remain substantively unchanged from the *Notice* 14–35 Proposal.

Proposed Amendments to Rule 2231

In 2019, after the publication of the *Notice,* FINRA adopted the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA–NYSE Member Rules Series.[12] No substantive changes to these rules were made in connection with the move into the consolidated FINRA rulebook. NASD Rule 2340 was renumbered as Rule 2231 and Incorporated NYSE Rule 409 and Incorporated NYSE Rule Interpretation

[6] *See* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing of File No. SR–FINRA–2009–028).

[7] FINRA had also proposed amending then NASD Rule 2340 to change the frequency of the delivery of account statements to a customer from quarterly to monthly where the customer had account activity during the preceding month, and with a frequency of not less than once every calendar quarter to each customer whose account had a security position or money balance during the period since the last such statement was sent to the customer.

[8] NASD Rule 3050 and NYSE Rule 407 are the predecessor rules to Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions). In 2015, FINRA adopted Rule 3210 in the consolidated FINRA rulebook to replace NASD Rule 3050, NYSE Rules 407 and 407A (Disclosure of All Member Accounts) and the corresponding NYSE interpretations. *See* Securities Exchange Act Release No. 75655 (August 10, 2015), 80 FR 48941 (August 14, 2015) (Notice of Filing of File No. SR–FINRA–2015–029). Rule 3210 governs accounts that associated persons open or establish at firms other than their employer and in which they have a beneficial interest. In general, the rule requires that the associated person must obtain the prior written consent of his or her employer to open or establish the account, and provides that the member firm where the account is held must transmit duplicate copies of confirmations and statements to the employer upon the employer's request.

[9] *See* Securities Exchange Act Release No. 64969 (July 26, 2011), 76 FR 46340 (August 2, 2011) (Notice of Filing of Amendment No. 1 to File No. SR–FINRA–2009–028).

[10] 17 CFR 240.10b–10. *See also* note 9, *supra.*

[11] *See* Securities Exchange Act Release No. 67588 (August 2, 2012), 77 FR 47470 (August 8, 2012) (Notice of Withdrawal of File No. SR–FINRA–2009–028).

[12] *See supra* note 3.

409 were renumbered as NYSE Rule 409T and NYSE Rule Interpretation 409T, respectively.

A. Paragraphs (a) Through (e) Under Rule 2231 To Remain Substantively Unchanged

In general, paragraph (a) (General) under Rule 2231 addresses the frequency of the delivery of customer account statements, and the requirement for account statements to include a statement advising customers to report to the firm (introducing firm and clearing firm, if different) inaccuracies in their accounts in writing. Paragraph (b) (Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts) addresses account statement delivery requirements for DVP/RVP arrangements. Paragraph (c) (DPP and Unlisted REIT Securities) requires, among other things, general securities members to include in customer account statements a per share estimated value for a direct participation program (''DPP'') or real estate investment trust (''REIT'') security developed in a manner reasonably designed to ensure that the per share estimated value is reliable. In addition, paragraph (c) provides two methodologies for calculating the per share estimated value for a DPP or REIT security that is deemed to have been developed in a manner reasonably designed to ensure that it is reliable: the net investment methodology and the appraised value methodology. Paragraph (d) (Definitions) sets forth several definitions and finally, paragraph (e) (Exemptions) permits FINRA to exempt any member firm from the rule upon a showing of good cause. Consistent with the *Notice* 14–35 Proposal, FINRA is proposing to retain, without substantive changes, the existing requirements set forth in paragraphs (a) through (e) under Rule 2231.

B. Proposed Supplementary Materials to Rule 2231

In an effort to harmonize the NYSE provisions with Rule 2231, FINRA is proposing to add new supplementary materials relating to compliance with Rule 4311, the transmission of customer account statements to other persons or entities, the use of electronic media, and compliance with Rule 3150. In addition, the proposed change would transfer, with clarifying and technical changes, the existing requirements in NYSE Rule Interpretation 409T relating to the information to be disclosed on statements,[13] assets externally held and included on statements solely as a service to customers,[14] the use of logos and trademarks, etc.,[15] and the use of summary statements.[16] As a result of this harmonization, some provisions would be new for FINRA members that are not also members of the NYSE (or ''non-NYSE members'') and for dual members. FINRA believes that harmonizing the NYSE provisions into Rule 2231 would provide greater clarity and regulatory efficiency to all FINRA member firms.

1. Compliance With Rule 4311 (Carrying Agreements) (Proposed Supplementary Material .01)

FINRA is proposing to add new Supplementary Material .01 to Rule 2231 that would remind firms of their obligations under Rule 4311, including specifically the rights and obligations of the carrying firm under Rule 4311(c)(2). Rule 4311 generally governs the requirements applicable to member firms when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected. In general, Rule 4311(c) requires that each carrying agreement in which accounts are to be carried on a fully disclosed basis must specify the responsibilities of each party to the agreement, setting forth the minimum responsibilities that the agreement must allocate. Among those responsibilities, outlined in Rule 4311(c)(2), is to require each carrying agreement in which accounts are carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3–3 (Customer protection—reserves and custody of securities.) and for preparing and transmitting statements of account to customers.[17] To emphasize the importance of ensuring the accuracy and integrity of customer account statements, proposed Supplementary Material .01 would remind firms of their obligations under Rule 4311, including paragraph (c)(2).

2. Transmission of Customer Account Statements to Other Persons or Entities (Proposed Supplementary Material .02)

Unlike NYSE Rule 409T, Rule 2231 does not address the transmission of customer account statements to third parties. To harmonize NYSE Rule 409T with Rule 2231, FINRA is proposing to add new Supplementary Material .02 to Rule 2231 to address the transmission of customer account statements to other persons or entities in similar fashion as NYSE Rule 409T. In general, NYSE Rule 409T(b) prohibits, without the NYSE's consent, the delivery of statements, confirmations or other communications to a nonmember customer: (1) In care of a person holding POA over the customer's account unless either (A) the customer has provided written instructions to the member organization to send such confirmations, statements or communications in care of such person, *or* (B) duplicate copies are sent to the customer at some other address designated in writing by the customer; or (2) at the address of any member, member organization, or in care of a partner, stockholder who is actively engaged in the member corporation's business or employee of any member organization.[18]

In the *Notice,* FINRA had proposed that, except as required to comply with Rule 3210 (the successor rule to NASD Rule 3050 and NYSE Rule 407), a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding POA over the customer's account unless (1) the customer provided written instructions to the firm to send such statements or other communications to such person or entity or in care of a person holding POA over the customer's account; *and* (2) the firm sent duplicates of such statements or other communications, in accordance with Rule 2231, directly to the customer either in paper format or electronically as provided in proposed Supplementary Material .03. FINRA notes that unlike NYSE Rule 409T(b), which provides a firm the option (using the disjunctive ''or'') to continue delivering account statements to the customer that has an arrangement with the firm to deliver account statements to a third party, proposed Supplementary Material .02 as described in the *Notice* 14–35 Proposal did not. Omitting this

[13] *See* NYSE Rule Interpretation 409T(a)/02 (Information to be Disclosed).

[14] *See* NYSE Rule Interpretation 409T(a)/04 (Assets Externally Held and Included in Statements Solely as a Service to Customers).

[15] *See* NYSE Rule Interpretation 409T(a)/05 (Use of Logos, Trademarks, etc.).

[16] *See* NYSE Rule Interpretation 409T(a)/06 (Use of Summary Statements).

[17] 17 CFR 240.15c3–3. Rule 4311(c)(2) also provides that the carrying firm may authorize the introducing firm to prepare and/or transmit statements of account to customers on the carrying firm's behalf with the prior written approval of FINRA.

[18] NYSE Rule 409T(b) also provides that NYSE may, upon written request, waive the requirements therein. NYSE Rule 409T(b)(2) waivers are addressed in NYSE Rule Interpretation 409T(b)/01 (Standards for Holding Mail for Foreign Customers—Rule 409T(b)(2) Waivers), discussed below.

option limited a customer's ability to decline receiving statements.

Commenters to the *Notice* 14–35 Proposal expressed concerns with this limitation, particularly where the customer's health or capacity was in question. In consideration of comments received to that proposal, FINRA is proposing to adjust the proposed supplementary material in several ways. The term ''or other communications'' would be deleted from the proposed rule text to clarify that proposed Supplementary Material .02 would be confined to only customer account statements. The specific reference to ''or in care of a person holding power of attorney over the customer's account'' would also be deleted from the proposed rule text, leaving the general reference to ''other persons or entities'' that could include any third party the customer may designate to receive the account statements.

In addition, while proposed Supplementary Material .02 would retain the continuous statement delivery requirement to the customer as described in the *Notice* 14–35 Proposal, the proposed supplementary material would be adjusted to create a limited exception to the general requirement to continue to deliver account statements to a customer in cases where there is a court-appointed fiduciary. Specifically, proposed Supplementary Material .02(b) would provide that where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on behalf of a customer, a member may cease sending account statements to the customer upon written instructions from such court-appointed fiduciary provided that the court-appointed fiduciary furnishes to the member an official copy of the court appointment that establishes authority over the customer's account(s). As adjusted, proposed Supplementary Material .02(a) would state that, except as provided for in proposed paragraph (b) relating to the existence of a court-appointed fiduciary, a member may not send account statements relating to a customer's account(s) to other persons or entities unless: (1) The customer has provided written instructions to the member to send the statements to such person or entity; and (2) the member continues to send accounts statements directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 (Use of Electronic Media to Satisfy Delivery Obligations) of Rule 2231.

Finally, proposed Supplementary Material .02(c) would maintain, in similar fashion to the *Notice* 14–35 Proposal, that notwithstanding proposed Supplementary Material .02(a), a member may provide duplicate customer account statements under Rule 2070 (Transactions Involving FINRA Employees), Rule 3210, or other similar applicable federal securities laws, rules, and regulations in accordance with the requirements of such rule.[19]

FINRA believes that the proposed supplementary material, as adjusted herein, achieves the appropriate balance between ensuring that customers continue to receive their account statements in accordance with Rule 2231(a) to retain the ability to readily monitor their account activity while recognizing that there are special circumstances where a firm may stop the delivery of account statements to customers.

3. Use of Electronic Media To Satisfy Delivery Obligations (Proposed Supplementary Material .03)

FINRA is proposing to add new Supplementary Material .03 to Rule 2231 that would expressly allow a member firm to satisfy its delivery obligations under the rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes.[20] This provision would be consistent with prior guidance FINRA has issued on the use of electronic media to satisfy delivery obligations.[21]

4. Compliance With Rule 3150 (Holding of Customer Mail) (Proposed Supplementary Material .04)

In general, Rule 3150 allows a firm to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the firm meets specified conditions. FINRA is proposing to add new Supplementary Material .04 to Rule 2231 that would permit member firms to hold customer mail, including customer account statements, subject to the requirements of Rule 3150.

5. Information To Be Disclosed on Statement (Proposed Supplementary Material .05)

NYSE Rule Interpretation 409T(a)/02 describes the information that must be disclosed on the front of a customer account statement: The identity of the introducing and carrying organizations, and their respective phone numbers for service; that the carrying organization is a member of Securities Investor Protection Corporation (''SIPC''); and the opening and closing account balances. Note 1 to NYSE Rule Interpretation 409T(a)/02 provides that ''[t]he SEC has stated that under the SEA Rule 15c3–1(a)(2)(iv), certain carrying firms must issue customer account statements, and the account statements must contain the name and telephone number of a person at the carrying firm who the customer can contact with inquiries regarding the account (See SEA Release No. 34–31511, dated November 24, 1992). The phone number of the carrying organization may appear on the back of the statement. If it does, it must be in 'bold' or 'highlighted' letters.'' Unlike NYSE Rule Interpretation 409T(a)/02, Rule 2231 does not detail the information that must be clearly and prominently disclosed on the front of an account statement. FINRA is proposing to transfer NYSE Rule Interpretation 409T(a)/02, inclusive of note 1, without substantive changes, as Supplementary Material .05 to Rule 2231. Proposed Supplementary Material .05 to Rule 2231 would specify the following information to be clearly and prominently disclosed on the front of the account statement: (1) The identity of the introducing and clearing firm, if different, and their respective contact information for customer service, permitting the identity of the clearing firm and its contact information to appear on the back of the statement provided such information is in ''bold'' or ''highlighted'' letters; (2) that the clearing firm is a member of SIPC; and (3) the opening and closing balances for the account.

6. Assets Externally Held (Proposed Supplementary Material .06)

NYSE Rule Interpretation 409T(a)/04 provides that where the account statement includes assets for which a member organization does not have fiduciary responsibility, does not have access to and which are not included on the member organization's books and records, such assets must be clearly separated on the statement. In addition, the statement must indicate that such externally held assets are included on

[19] *See supra* note 8.

[20] SEC guidance to date on the use of electronic media generally requires the affirmative consent of the investor or customer. *See* Securities Act Release No. 7233 (October 6, 1995); 60 FR 53458 (October 13, 1995); Securities Act Release No. 7288 (May 9, 1996); 61 FR 24644 (May 15, 1996); and Securities Act Release No. 7856 (April 28, 2000); 65 FR 25843, 25854 (May 4, 2000).

[21] *See Notice to Members* 98–3 (January 1998) (stating in part that members are permitted to electronically transmit documents that they are required or permitted to furnish to customers under FINRA rules, provided they comply with all aspects of the SEC's electronic delivery requirements).

the statement solely as a service to the customer and are not covered by SIPC, and that information is derived from the customer or other external source for which the member organization is not responsible.[22] Rule 2231 does not contain a similar provision.

FINRA is proposing to transfer the requirements of NYSE Rule Interpretation 409T(a)/04, without substantive changes, as proposed Supplementary Material .06 to Rule 2231. Under proposed Supplementary Material .06, where the account statement includes assets that the member firm does not carry on behalf of a customer and that are not included on the member firm's books and records, such assets must be clearly and distinguishably separated on the statement. In addition, in such cases, the statement must: (1) Clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer; (2) disclose that information, including valuation, for such externally held assets is derived from the customer or other external source for which the member firm is not responsible; and (3) identify that such externally held assets may not be covered by SIPC.

7. Use of Logos, Trademarks, Etc. (Proposed Supplementary Material .07)

NYSE Rule Interpretation 409T(a)/05 provides that where the logo, trademark or other identification of a person (other than the introducing firm or clearing firm) appears on an account statement, then the identity of such person and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be misleading or confusing to customers. Rule 2231 does not contain a similar provision. FINRA is proposing to transfer, without substantive change, NYSE Rule Interpretation 409T(a)/05 as proposed Supplementary Material .07. FINRA notes that proposed Supplementary Material .07 would be consistent with the general requirements of Rule 2210 (Communications with the Public).

8. Use of Summary Statements (Proposed Supplementary Material .08)

NYSE Rule Interpretation 409T(a)/06 addresses the responsibilities associated with the practice of firms, with other related financial institutions, to jointly formulate and distribute to their common customers their respective customer account statements, together with ''summary statements.'' [23] In general, a summary statement reflects information from entities that is part of a financial services ''group'' or ''family'' or where a firm carries accounts for another broker-dealer that is part of such group or family. A summary statement provides an overview of the customer's accounts at the separate entities and is supported by and derived from the detail on the separate underlying respective account statements. NYSE Rule Interpretation 409T(a)/06 sets forth several requirements for the use of summary statements that include: (1) An indication that such summary statement is provided for informational purposes and includes assets held at different entities; (2) the summary statement identifies each entity from which information is provided or assets are being held are included, their relationship to each other, and their respective functions (*e.g.,* introducing or carrying brokerage firms, fund distributor, banking or insurance product providers, etc.); (3) relative to services provided for assets included on the summary, the summary statement must clearly distinguish between assets held by each entity, identify the customer's account numbers at each entity, and provide a customer service telephone number at each entity (if the account number and customer service numbers are not included on the underlying statements); and (4) identify each entity that is a member of SIPC. These requirements help ensure that customer account statements clearly identify the respective entities involved and distinguish brokerage assets from non-brokerage assets.[24] Rule 2231 does not have a counterpart provision.[25] In the *Notice,* FINRA had proposed transferring the requirements of NYSE Rule Interpretation 409T(a)/06, without substantive changes, as proposed Supplementary Material .08 to Rule 2231.

FINRA is proposing to retain this approach, but with some clarifying revisions to proposed Supplementary Material .08 to expressly state that the summary statement is for a customer's convenience and includes assets that may not be held by the broker-dealer, and does not replace any other statement the customer may receive from other financial institutions that may hold the customer's assets. Under proposed Supplementary Material .08, as revised, if a multi-entity summary statement is sent to customers, it must: (1) Indicate that the summary statement is provided for the customer's convenience and includes assets that may not be held by the broker-dealer; (2) indicate that the summary statement does not replace any other statement(s) the customer may receive from other financial institutions that hold the customer's assets; (3) identify each entity from which information is provided or assets being held are included, their relationship to each other (*e.g.,* parent, subsidiary or affiliated organization), and their respective functions (introducing firm, carrying firm, fund distributor, banking or insurance product provider, etc.); (4) clearly distinguish between assets held or categories of assets held by each entity included in the summary; (5) identify the customer's account number at each entity and provide a customer service contact information at each entity (if the account number and customer service information at each entity are included on their respective account statements, then such information need not be included on the summary statement); and (6) identify each entity that is a member of SIPC. Proposed Supplementary Material .08 would also require a member firm to ensure that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such

[22] *See* NYSE Information Memo 97–56 (December 1997) (stating, ''[t]his provision is not intended to cover assets (*e.g.,* stocks or mutual funds) to which the member organization has access that may be held at a depository or mutual fund.'').

[23] *See generally* NYSE Information Memo 97–56 (December 1997).

[24] NYSE Rule Interpretation 409T(a)/06 also provides that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation must be recognizable as having been arithmetically derived from the separately stated totals or their components. In addition, the summary statement, and the beginning and end of each underlying account statement, must be clearly distinguishable from each other by using some distinct form of demarcation (*e.g.,* color, pagination or columns). Further, there must be a written agreement between the parties that are jointly distributing the combined statements with the summary, that each entity has developed procedures and controls for testing the accuracy of its own information included on the customer statement. Finally, NYSE Rule Interpretation 409T(a)/06 requires that summary statements must comply with NYSE Rule 409T and all interpretations thereof.

[25] While Rule 2231 does not have a counterpart provision to NYSE Rule Interpretation 409T(a)/06, FINRA has issued guidance reminding firms of their responsibilities when providing customers with consolidated financial account reports or ''consolidated reports,'' which offer a broad view of customers' investments, may include assets held away from the firm, and may provide not only account balances and valuations, but performance data as well. In that guidance, FINRA noted that these types of communications ''may supplement, but do not replace, the customer account statement required pursuant to [Rule 2231] and [NYSE Rule 409T], which is prepared and disseminated to the customer through a separate process. Consolidated reports may not be represented as a substitute for, and must be distinguished from, account statements that are required by rule.'' *See Regulatory Notice* 10–19 (April 2010).

aggregation is recognizable as having been arithmetically derived from the separately stated totals or their components. In addition, proposed Supplementary Material .08 would require that a member firm also must distinguish the beginning and end of each separate statement by a distinct form of demarcation. Finally, the proposed supplementary material would require a member firm to ensure that there is a written agreement between the parties jointly formulating or distributing the combined statements with the summary attesting that each entity has developed procedures and controls for testing the accuracy of its own information included on the statements, and that the summary statement complies with Rule 2231.

C. NYSE Provisions To Be Eliminated and Not Harmonized With Rule 2231

FINRA is proposing to delete NYSE Rule 409T and NYSE Rule Interpretation 409T in their entirety on the basis that the underlying concepts in these provisions have been included in Rule 2231, are duplicative of other rules, or are outdated. The following describes concepts found in the NYSE provisions that would not be incorporated into Rule 2231.

1. NYSE Rule 409T Provisions

a. Confirmations or Other Communications (NYSE Rule 409T(b))

As described above, the proposed rule change would confine proposed Supplementary Material .02 to customer account statements to lend clarity to the scope of the provision. FINRA notes that the delivery requirements of confirmations are governed by SEA Rule 10b–10 (Confirmation of transactions) and FINRA Rule 2232 (Customer Confirmations).

b. Person Holding Power of Attorney (or Attorney-in-Fact) (NYSE Rule 409T(b) and Paragraphs (1) Through (6) Under NYSE Rule 409T.10 (Exceptions to Rule 409T(b))

In addition to eliminating NYSE Rule 409T(b), the proposed rule change would eliminate NYSE Rule 409T.10(1) through (6), which provides exceptions to the requirements of NYSE Rule 409T(b) for certain identified persons or entities, such as persons having powers of attorney.[26] As described above, FINRA is proposing to adopt proposed Supplementary Material .02 relating to the transmission of customer account statements to other persons or entities, which would provide an exception for court-appointed fiduciaries.

c. Legend on Account Statements Pertaining to Firm's Financial Statements (NYSE Rule 409T(e)(1))

In general, NYSE Rule 409T(e)(1) requires the inclusion of a legend on all account statements that notifies a customer that the firm's financial statements are available for inspection at its offices or a copy can be mailed upon request. The proposed rule change would eliminate this requirement in light of existing requirements under paragraph (c) (Customer Statements) of SEA Rule 17a–5 (Reports to be Made by Certain Brokers and Dealers),[27] which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers, and FINRA Rule 2261 (Disclosure of Financial Condition), which requires a member to make information relative to a member's financial condition available to inspection by customers, upon request.

d. Duplicate Copies of Monthly Statements to Guarantors (NYSE Rule 409T(g))

NYSE Rule 409T(g) provides that member firms carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them. The proposed rule change would eliminate NYSE Rule 409T(g) because this provision, which provides that members should send duplicate account statements to guarantors, would be addressed by the general requirement in proposed Supplementary Material .02 to obtain written instructions from the customer to send account statements to a third party.

e. Holding Customer Mail (NYSE Rule 409T.10(7))

As noted above, the proposed rule change would eliminate the concept of holding customer mail set forth in paragraph (7) under NYSE Rule 409T.10, as a member's obligations with respect to this activity are addressed in Rule 3150, and proposed Supplementary Material .04 would expressly permit a member to hold customer mail consistent with Rule 3150.

2. NYSE Rule Interpretation 409T

a. Use of Third Party Agents (NYSE Rule Interpretation 409T(a)/03)

In general, NYSE Rule Interpretation 409T(a)/03 requires a written representation or undertaking from the member organization to the NYSE, representing that certain conditions are satisfied when using third party agents (*e.g.,* service bureaus or other independent entities) to prepare and transmit customer account statements.[28] The proposed rule change would eliminate NYSE Rule Interpretation 409T(a)/03 because such arrangements are addressed under Rule 4311 and other relevant guidance.[29]

b. Standards for Holding Mail for Foreign Customers—Rule 409T(b)(2) Waivers (NYSE Rule Interpretation 409T(b)/01)

The proposed rule change would eliminate NYSE Rule Interpretation 409T(b)/01, which provides guidelines for holding confirmations, statements, and broker-dealer financial statements for foreign customers. A member's obligations with respect to holding customer mail are addressed in Rule 3150, which is referenced in proposed Supplementary Material .04.

D. Technical Changes to Other FINRA Rules

The proposed harmonization of the NYSE provisions with Rule 2231 would require technical amendments to Interpretative Material (''IM'')–1013–1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations) and IM–1013–2 (Membership Waive-In Process for Certain NYSE American LLC Member Organizations), which describe a waive-in membership application process for some member organizations of the

[26] *See* NYSE Rule 409T.10(4): ''Corporations of which partners, stockholders or employees are officers or directors, and corporation accounts over which such persons have powers of attorney, provided, in each such case, the partner, stockholder or employee is duly authorized by the corporation to receive communications covering the account.''

[27] 17 CFR 240.17a–5.

[28] Under NYSE Rule Interpretation 409T(a)/03, a member organization must represent that the third party is acting as agent for the member organization, that the member organization retains responsibility for compliance with NYSE Rule 409T(a), and that the member organization has developed procedures and controls for reviewing and testing the accuracy of statements, and will retain copies of all such statements in accordance with applicable books and records requirements. In addition, NYSE Rule Interpretation 409T(a)/03 addresses the allocation of responsibilities for preparation and transmissions of statements under a carrying agreement and provides that an introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a third party agent and may not itself prepare or transmit such statements.

[29] *See Notice to Members* 05–48 (July 2005) (describing a member's responsibilities when outsourcing activities to third party service providers).

NYSE and NYSE American LLC. In general, subject to specified terms set forth in these interpretative materials, a firm admitted to FINRA membership through either of these provisions (*i.e.,* ''waived-in firm'') is not subject to the remaining FINRA rules that have yet to be harmonized with their corresponding NYSE rules or interpretations under the Temporary Dual FINRA–NYSE Member Rule Series. Currently, these rules are Rule 2231 and the NYSE provisions. FINRA is proposing to amend IM–1013–1 and IM–1013–2 to remove the reference to Rule 2231 as all waived-in firms will become subject to Rule 2231, as amended herein.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 365 days following publication of the *Regulatory Notice* announcing Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[30] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because the proposed rule change will help protect investors and the public interest by largely retaining the existing requirements under Rule 2231 that promotes effective regulation of account statements. FINRA believes that by proposing several new supplementary materials that provide clarity in areas such as compliance with other FINRA rules, the use of electronic delivery, transmission of account statements to other persons or entities, information to be disclosed on statements, assets externally held, the use of logos and trademarks, and the use of summary statements, the proposed rule change will establish consistent industry standards pertaining to the substance and the presentation of customer account statements.

In addition, FINRA believes proposed Supplementary Material .02, as revised in light of comments received in response to the *Notice,* strikes an appropriate balance to protect investors by ensuring that customers continue to receive their account statements while reducing the proposed rule change's impact on member firms. As discussed previously, these revisions include: (1) Confining the scope only to customer account statements; (2) adding a limited exception from the general requirement to continue providing account statements to customers who have authorized third party delivery by permitting member firms to cease sending such statements to customers upon written instructions from a court-appointed fiduciary acting on behalf of the customer; and (3) clarifying that, notwithstanding the general requirement to obtain written instructions from a customer to establish third party delivery of account statements, firms may provide duplicate customer account statements under Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change and its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to meet its regulatory objectives.

1. Regulatory Need

Rule 2231 and the NYSE provisions have remained substantively unchanged since their adoption into the consolidated FINRA rulebook. Having two sets of rules with differing application or scope may prevent firms from consistently applying the rules and thus create uncertainties in compliance and lead to unnecessary costs. In an effort to harmonize these rules, FINRA is proposing to amend Rule 2231 to incorporate guidance and several provisions that exist under the NYSE provisions and in other FINRA rules as supplementary materials. Notably, FINRA is proposing to adopt new Supplementary Material .02, derived in large part from NYSE Rule 409T(b), but with some adjustments from the terms set forth in the *Notice* that would address a situation in which a customer may want to transmit account statements to other persons or entities, and stop receiving statements due to particular circumstances. As a result of the proposed harmonization, FINRA is proposing to eliminate the NYSE provisions in their entirety as they are, to some degree, duplicative of Rule 2231 or would become obsolete by the proposed rule change.

2. Economic Baseline

The current provisions governing customer account statements under Rule 2231 and the NYSE provisions, and other related rules and current industry practices serve as an economic baseline for the proposed rule change. While all FINRA members are subject to Rule 2231, dual members are also subject to several additional requirements existing only in the NYSE provisions. As of December 31, 2020, there are 3,435 FINRA members, of which 134 are dual members.

3. Economic Impacts

The substantive changes to Rule 2231 described in this proposed rule change relate to the supplementary materials, most of which are derived from the NYSE provisions and for that reason, the economic impacts herein focus primarily on the proposed supplementary materials, particularly proposed Supplementary Material .02.

Proposed Supplementary Material .02

In general, proposed Supplementary Material .02 addresses a situation where a customer instructs the firm, in writing, to send his or her account statements to another person or entity and limits the customer's ability to stop receiving them, except where there is a court-appointed fiduciary.[31] One issue some commenters raised was the requirement for firms to continue delivering account statements to the customer even where the customer directs the firm, in writing, to send the customer's account statements to a third party, and does not wish to continue receiving them due to health concerns, among other reasons. For example, SIFMA expressed the belief that the requirement to continue delivering account statements to the customer may result in the fraud that will likely arise from identity theft where account statements are sent to a customer against his or her request or against the request of a person with the legal authority to act on behalf of the customer. SIFMA added that proposed Supplementary Material .02 may have a

[30] 15 U.S.C. 78*o*–3(b)(6).

[31] Proposed Supplementary Material .02 also provides that members are not required to obtain prior written consent to send customer account statements in compliance with Rule 2070, Rule 3210, or other similar applicable federal securities laws, rules, and regulations in accordance with the requirements of such rule.

material negative impact on the client experience and serve to drive clients to advocacy models without this requirement.

FINRA believes that the customer's ability to stop receiving his or her own account statements when there is a court-appointed fiduciary strikes the appropriate balance between the investor protection functions of Rule 2231 to ensure that the customer is able to monitor and verify the transactions occurring in the customer's account and the concerns raised by some commenters about ceasing the delivery of account statements to a customer under compelling circumstances. FINRA recognizes that some customers may incur supplemental costs to conform to the continuous delivery requirement in proposed Supplementary Material .02. Customers who do not wish to receive their account statements may bear some burden in controlling and destroying them. Alternatively, customers may incur costs associated with seeking the exception through a court-appointed fiduciary. Customers may incur the direct cost of seeking a court-appointed fiduciary as well as the indirect cost of giving away other rights not associated with account statements when a fiduciary is appointed by the court. To alleviate the potential compliance costs associated with continuous statement delivery to customers and the concern over possible identity theft and fraud, members could encourage, if appropriate, their customers to choose to receive their statements electronically in a manner consistent with proposed Supplementary Material .03, a further discussion of which follows below.

In addition, firms may also incur costs to conform to proposed Supplementary Material .02 including the tracking and retention of each customer's written instructions and official documents related to the court appointment of a fiduciary, and where statements are delivered in paper format, the costs of additional postage, printing, and other attendant expenses.[32] However, FINRA understands that in practice, some firms already provide continuous account statement delivery to their customers even with third party delivery arrangements in place except in special circumstances (*e.g.,* validated medical excuse), and that concerns related third party delivery arrangements rarely arise.

Other Proposed Supplementary Materials

Proposed Supplementary Materials .01, .03, and .04, respectively, would remind firms of existing requirements under Rule 4311, SEC guidance on using electronic media to satisfy delivery obligations, and Rule 3150. The NYSE provisions that FINRA is proposing to incorporate into Rule 2231 as Supplementary Materials .05, .06, .07, and .08 would address, respectively, the information to be disclosed on statements, externally held assets, the use of logos and trademarks, etc., and the use of summary statements. FINRA does not expect these proposed harmonizing amendments to Rule 2231 to impose material burdens on member firms as these proposed supplementary materials are substantially similar to existing rules or otherwise consistent with current guidance.

4. Alternatives Considered

FINRA considered various suggestions in developing the proposed rule change. The proposed rule change reflects the changes that FINRA believes at this time to be the most appropriate for the reasons discussed herein.

a. Frequency of Delivery of Account Statements to Customer

In the Initial Rule Filing and Amended Rule Filing, FINRA had considered amending then NASD Rule 2340 to change the frequency of the delivery of account statements to customers from quarterly to monthly. The comments FINRA received in response to these prior filings suggested that such a proposed change would result in significant compliance costs for the industry without commensurate benefits for customers, and could create conflicts with some securities laws and regulations, among other things. Based on these comments, FINRA has determined to retain the quarterly delivery requirement for customer accounts statements currently set forth in Rule 2231(a).[33]

b. Definition of ''General Securities Member''

Currently, under Rule 2231(d)(2) a ''general securities member'' refers to ''any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3–1(a). Notwithstanding the foregoing definition, a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this section.'' [34] In the *Notice,* FINRA specifically requested comment on potential clarifications to the definition of ''general securities member.'' [35] At this time, FINRA is not proposing to amend Rule 2231(d)(2).

c. Exception From the General Requirement To Send Account Statements to Customers

Proposed Supplementary Material .02 as presented in the *Notice* did not contemplate an exception from the firm's general requirement to continue sending account statements to customers. In the *Notice,* FINRA specifically requested comment on whether the proposal should include specific exclusions that would allow members not to send account statements to customers under identified situations. FINRA also specifically sought comment on current industry practices, safeguards, or best practices with respect to sending account statements to a customer who is disabled or incapacitated, resides in a nursing home, has a trusted person to review statements, or where there is a valid POA or guardianship established.

In consideration of the comments to the *Notice,* FINRA has modified proposed Supplementary Material .02 from the terms outlined in the *Notice.* In addition to limiting the scope of the proposed supplementary material to only customer account statements and omitting the specific reference to POA, the proposed provision would create a limited exception from the general requirement for firms to continue to deliver account statements to a customer in cases where there is a court-appointed fiduciary acting on behalf of the customer. The other aspects of the proposed supplementary material would remain substantively unchanged from the terms set forth in the *Notice,* including the option to send account statements to the customer either in paper format or electronically as provided in proposed Supplementary Material. 03.

FINRA notes that members could request customers that provide written instructions to the member to send account statements to other persons or entities to authorize the member to

[32] In the *Notice,* FINRA asked specific questions concerning, among other things, the direct and indirect costs that may result from proposed Supplementary Material .02. *See generally Notice,* Section C (Request for Comment). SIFMA commented that a firm with approximately 7.4 million accounts provided a cost estimate of over 14 million dollars just for the postage and mailings associated with the nearly 2.2 million accounts potentially impacted by the prospective application of proposed Supplementary Material .02, excluding substantial staffing and technology costs.

[33] The account delivery frequency aligns with NYSE Rule 409T(a).

[34] The NYSE provisions do not have a corresponding definition.

[35] FINRA did not receive comments in this area, but FAF noted that registered investment advisors (''RIAs'') do not fall under the definition.

satisfy the requirement to continue delivering statements to the customer through electronic delivery consistent with proposed Supplementary Material .03. In this manner, FINRA believes that member firms could both mitigate the concerns relating to the costs of postage, printing and mailing account statements, and address concerns relating to possible identity theft and fraud in circumstances where account statements are sent. With respect to the general requirement for firms to continue to deliver account statements to the customer even when the customer has directed the firm, in writing, to send account statements to other persons or entities, FINRA understands that even where there is a third party delivery arrangement in place, in general, firms continue to send account statements to their customers except under extenuating circumstances (*e.g.,* validated medical excuse). This industry practice accords with Rule 2231(a), which reflects the core principle that customers should be fully informed of the status of their accounts.

FINRA believes that proposed Supplementary Material .02, as modified, lends the appropriate balance between ensuring that customers continue to receive their account statements in accordance with Rule 2231(a) to ensure that they have the ability to monitor their account activity while recognizing that there may be special circumstances where a firm may stop the delivery of account statements to customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in the *Notice* 14–35 Proposal. FINRA received 14 comment letters in response to the *Notice* 14–35 Proposal. A copy of the *Notice* 14–35 Proposal is available on FINRA's website at *http://www.finra.org.* A list of the comment letters received in response to the *Notice* 14–35 Proposal is available on FINRA's website.[36] Copies of the comment letters received in response to the *Notice* 14–35 Proposal are also available on FINRA's website.

Several commenters expressed general support for the purpose and intent of the *Notice* 14–35 Proposal.[37] In addition, several commenters noted that the proposed rule change includes meaningful changes in response to comments on the Initial Rule Filing.[38] However, as discussed below, commenters to the *Notice* 14–35 Proposal objected to limiting a customer's ability to decline receiving statements, particularly where the customer's health or capacity was in question. In addition, the commenters raised concerns regarding existing customer account relationships with third party delivery arrangements in place. FINRA considered the commenters' concerns, including the attendant operational aspects of sending account statements to customers and third parties. The comments and FINRA's responses are set forth below.

1. General (Rule 2231(a))

A. Quarterly Customer Account Statement Delivery Requirement

Currently, Rule 2231(a) generally requires a general securities member to send account statements to customers at least once each calendar quarter containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent, except if carried on a DVP/RVP basis. NYSE Rule 409T(a) similarly establishes a quarterly account statement delivery requirement.

Several commenters expressed support for retaining the delivery frequency in the current rule, noting that the quarterly delivery requirement is consistent with industry practices.[39] NASAA, however, urged FINRA to revert to the monthly delivery frequency as originally proposed in the prior rule filings, stating that monthly delivery would allow customers to better monitor their accounts and identify any potential unauthorized fraudulent activity. PIRC recommended that customers should have the option of receiving quarterly or monthly statements based on their own individual needs, and also recommended that customers be provided with the option to receive account statements electronically and to make available to customers a status of their accounts via telephone or online at the customer's request.

FINRA notes that nothing in the rule, in its current form, precludes a firm from sending account statements to a customer on a more frequent schedule in a particular medium to meet the needs of the customer. Consistent with the *Notice* 14–35 Proposal, FINRA is proposing to retain the existing requirement in Rule 2231(a) for members to send customer account statements at least once each quarter.

B. Securities Investor Protection Act (''SIPA'') Disclosure Requirement

Rule 2231(a) requires a general securities member to include in the account statement a statement advising a customer to report promptly any inaccuracy or discrepancy in that person's account to the member firm, and that any oral communication to the member firm should be reconfirmed in writing to further protect the customer's rights, including rights under SIPA. NYSE Rule 409T(e)(2) similarly requires a member organization to include a legend in the account statement with the same advice.

PIRC expressed concerns with the SIPA disclosure requirement in Rule 2231(a). PIRC stated that it has encountered firms that have used the disclosure as a defense to claims in arbitration, suggesting that the disclosure only appears to be intended to protect investors. PIRC recommended that FINRA amend this portion of the rule to ensure that such disclosure cannot be used against a customer in a dispute.

In 2001, the then U.S. General Accounting Office, now known as the Government Accountability Office (''GAO''), issued a report in which it made recommendations to the SEC and SIPC about ways to improve the information available to the public about SIPC and SIPA.[40] Among other things, the GAO recommended that self-regulatory organizations, such as FINRA, consider requiring firms to include information on periodic statements or trade confirmations to advise investors that they should document account discrepancies in writing. In response to that recommendation, Rule 2231(a) was amended in 2006 to require that account statements include a statement advising each customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm and clearing firm (where these are different firms), and such statement also must advise the customer that any oral communication should be re-confirmed in writing to further protect the customer's rights, including rights under SIPA.[41] Written documentation is

[36] See SR–FINRA–2021–024 (Form 19b–4, Exhibit 2e) for a list of abbreviations assigned to commenters (available on FINRA's website at *http://www.finra.org*).

[37] *See* GSU, PIRC, SIFMA, WFA, and Wulff.

[38] *See* Edward Jones, FSI, PIRC, SIFMA, WFA, and Wulff.

[39] *See* Edward Jones, FSI, SIFMA, and WFA.

[40] *See* Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors, GAO–01–653 (May 25, 2001), *https://www.gao.gov/products/gao-01-653.*

[41] *See* Securities Exchange Act Release No. 54411 (September 7, 2006), 71 FR 54105 (September 13, 2006) (Order Approving File No. SR–NASD–2004–

Continued

important because in the event a firm goes into SIPC liquidation, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer is able to prove otherwise.[42] As FINRA noted in the 2006 rule filing to amend Rule 2231(a), the disclosure requirement does not impose any limitation whatsoever on a customer's right to raise concerns regarding inaccuracies or discrepancies in his or her account at any time, either in writing or orally.[43] Further, a customer's failure to promptly raise such concerns, either in writing or orally, does not preclude a customer from reporting an inaccuracy or discrepancy in his or her account during any SIPC liquidation of his or her brokerage or clearing firm.[44] FINRA believes that the provision continues to enhance customer protection in accordance with GAO's recommendation and has determined to maintain Rule 2231(a) pertaining to SIPA disclosure in its current form.

2. DVP/RVP Accounts (Rule 2231(b))

Currently, Rule 2231(b) and NYSE Rule 409T(a) provide that quarterly account statements do not need to be sent to a customer if the customer's account is carried solely for execution on a DVP/RVP basis, subject to specified conditions.[45]

Auerbach recommended that Rule 2231 provide an exemption from the requirement to issue periodic account statements in the case of DVP/RVP customers of a member firm that use a third party custodian selected by the customer that is required to issue periodic account statements to the customer. Auerbach stated that in such cases, periodically issued brokerage firm account statements are duplicative, unnecessary and increase costs for the broker, the customer, and the third party custodian, and such accounts statements will compel the customer and its custodian to reconcile their records with the statement from the broker and require all three parties to expend additional time, energy, and cost on a matter that is already handled through the normal clearance and settlement process. SIFMA requested confirmation that members may treat an institutional customer trading pursuant to discretionary authority in the DVP/RVP account or the authorized person or institution that opened the account as the ''customer'' for these purposes and collect and maintain the consents from such institutions, instead of the underlying customers.

FINRA believes that the issues raised by the commenters are better addressed through FINRA's interpretative guidance process so that FINRA has the opportunity to fully consider the relevant facts and circumstances. In addition, FINRA emphasizes that the rule in its current form allows a DVP/RVP customer to affirmatively elect not to receive account statements. By requiring the customer's affirmative consent, the customer's ability to receive quarterly statements is preserved, and the member is precluded from unilaterally terminating delivery of customer statements. Moreover, the customer is able to promptly receive particular account statements upon request, and promptly reinstate the delivery of account statements upon request.[46]

3. Definitions (Rule 2231(d))

Rule 2231(d)(2) provides that a '''general securities member' refers to any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3–1(a). Notwithstanding the foregoing definition, a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of [Rule 2231].'' FAF noted that RIAs need to have access to customer information in order to perform their duties to their customers or clients. FAF expressed concern that RIAs are not covered by the definition of ''general securities member'' in Rule 2231(d) and consequently, RIAs would not be entitled to receive customer or client information.

The term ''general securities member'' identifies which FINRA member firms are required to deliver account statements, not which firms are entitled to receive such statements. Moreover, FINRA notes that nothing in proposed Supplementary Material .02 would preclude a customer from providing written consent to his or her member firm to send account statements to an RIA, subject to the conditions set forth in the proposed rule.[47]

4. Compliance With Rule 4311 (Carrying Agreements) (Proposed Supplementary Material .01)

Proposed Supplementary Material .01 to Rule 2231 would remind firms that Rule 4311(c)(2) generally requires each carrying agreement, in which accounts are carried on a fully disclosed basis, to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3–3 and for preparing and transmitting statements of account to customers.[48] Rule 4311(c)(2) provides that the carrying firm may authorize the introducing firm to prepare and transmit such statements on the carrying firm's behalf with the prior written approval of FINRA.

SIFMA requested clarification from FINRA regarding the obligation to obtain written authorization from a customer regarding the mailing of statements to a third party, and the ability of a clearing firm to rely on introducing brokers in asserting the authenticity of a written approval. SIFMA stated that introducing firms are in the best position to know the customer and, as long recognized through contract and in practice, and as permitted under Rule 4311, introducing firms are typically allocated the responsibility for opening accounts as well as maintaining and updating customer addresses, which ultimately drives the delivery of account statements.

FINRA agrees that consistent with guidance on the allocation of responsibilities between carrying firms and introducing firms and as permitted under Rule 4311, clearing firms may reasonably rely on introducing firms with respect to updating and keeping track of required consents and addresses for third parties that may receive account statements under this rule.

171), as corrected by Securities Exchange Act Release No. 54411A (October 6, 2006), 71 FR 61115 (October 17, 2006). *See also Notice to Members* 06–72 (December 2006).

[42] *See supra* note 41. SIPC advises investors who discover an error in a confirmation or statement to immediately bring the error to the attention of their brokerage firm in writing and to keep a copy of any such writing. *See* SIPC, How SIPC Protects You: Understanding the Securities Investor Protection Corporation (2015), *https://www.sipc.org/media/brochures/HowSIPCProtectsYou-English-Web.pdf.* More recently, FINRA, NASAA, and SIPC jointly issued an investor alert discussing the importance of regularly reviewing brokerage account statements, and the steps a customer should take to document concerns with an error on a brokerage statement or trade confirmation. *See* FINRA Investor Alert, It Pays to Pay Attention to Your Brokerage Account Statements (December 18, 2019), *https://www.finra.org/investors/alerts/pay-attention-brokerage-account-statements. See also* NASAA Investor Advisory, It Pays to Pay Attention to Your Brokerage Account Statements'' (December 2019), *https://www.nasaa.org/53392/53392/?qoid=investor-advisories* and SIPC News Release, It Pays to Pay Attention to Your Brokerage Account Statements, *https://www.sipc.org/news-and-media/news-releases/20191218*).

[43] *See supra* note 42.

[44] *See supra* note 42.

[45] These rules do not qualify or condition the obligations of members under SEA Rule 15c3–3(j)(1) concerning quarterly notices of free credit balances on statements.

[46] *See Notice to Members* 06–68 (November 2006).

[47] RIAs also should consider their obligations under the Investment Advisors Act of 1940, including Rule 206(4)–2 (Custody of Funds or Securities of Clients by Investment Advisors).

[48] *See Regulatory Notice* 11–26 (May 2011).

However, both carrying firms and introducing firms must have policies and procedures in place to ensure that their respective responsibilities are met.[49]

5. Transmission of Customer Account Statements to Other Persons or Entities (Proposed Supplementary Material .02)

Many commenters, while supportive of the *Notice* 14–35 Proposal overall, expressed views on proposed Supplementary Material .02.[50] NAELA expressed doubt that the proposed provision would protect vulnerable persons (*e.g.,* persons with disabilities or who are incapacitated) in any meaningful way. The views of many other commenters generally related to the scope of the proposed provision, customer instructions to establish delivery of the customer's account statements to a third party, the circumstances that may warrant an exception to the general requirement for a firm to continue delivering account statements to the customer even where there is a third party delivery arrangement in place, operational concerns, and implementation.

A. Scope

In the *Notice* 14–35 Proposal, proposed Supplementary Material .02 pertained to account statements ''or other communications'' relating to the customer's account. Commenters expressed concerns and sought clarification relating to the scope of the proposed provision.

SIFMA raised concerns with the inclusion of ''other communications,'' stating that the proposed supplementary material could include a host of operational communications with third parties (*e.g.,* custodians, issue and transfer agents, counterparties to trades, banks in connection with disbursements and deposits and a member firm's own vendors) where firms need to send ''communications'' about a customer's account in order to provide a service requested for the customer. SIFMA requested clarity regarding the scope of ''other communications'' in the context of the proposed rule. FINRA agrees with the concerns raised by SIFMA in this regard and for clarity, has adjusted the language by deleting the references to ''or other communications'' from proposed Supplementary Material .02 so that the scope of the propose provision is limited solely to customer account statements.

SIFMA also sought clarification pertaining to the implications of Supplementary Material .02 on a firm's existing obligations under SEA Rule 17a–3(a)(17)(B)(2) and FINRA Rule 3110(c)(2) to confirm a customer's address change. FINRA notes that proposed Supplementary Material .02 is not intended to impose additional requirements that would impact a firm's current obligations to validate a change in address for a customer under the applicable SEA and FINRA rules.

B. Customer Instructions To Deliver Account Statements to Third Party

Proposed Supplementary Material .02 provides that in general, a member may not send account statements relating to a customer's account to other persons or entities unless the customer has provided written instructions to the member to send such statements to a designated third party. However, in order to comply with Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations, proposed Supplementary Material .02 would provide that a firm is not required to obtain written instructions from the customer to meet the requirements of such applicable rules or regulations.

Several commenters expressed views on the general requirement for firms to obtain written instructions from customers.[51] PIRC expressed its support for the general requirement. NAELA noted that persons with disabilities or who are incapacitated are unlikely able to send written direction to their financial institution to send account statements to a third party. Two commenters questioned the need for written instructions, suggesting that oral instructions should suffice.[52] Other commenters recommended imposing additional methods to validate customer instructions and the nature of the relationship between the customer and third party.[53]

a. Oral Instructions

Two commenters recommended that oral consent of the customer, combined with prominent disclosure on the customer's account statements, identifying the third party or interested party that is also receiving statements or other appropriate documentation of such instruction, would lend more flexibility to firms and customers to establish third party delivery of account statements.[54] Edward Jones explained that there was a regulatory distinction between adding a third party to an account to receive account statements and directing all account statements to a third party instead of to the customer, noting that when a third party is being added to an account, a more effective approach would be to require the oral consent of the customer. SIFMA added that oral instructions would prevent the operational challenge of obtaining written consent in instances where written consent is impracticable. These commenters stated that oral consent and disclosure would be consistent with current industry practice.

FINRA notes that similar views were expressed by commenters to the prior rule filing,[55] and FINRA continues to maintain the view that instructions from customers with respect to the delivery of account statements should be in writing to ensure proper consent is received and can be evidenced. FINRA believes that oral instructions are insufficient in this context due to several concerns such as identify theft and privacy concerns, among others, and that firms must be able to document and record a customer's consent to send account statements to a third party. FINRA has permitted firms to act on oral instructions from customers in other circumstances (*e.g.,* trading instructions) largely to allow customer and firms to act expeditiously to execute securities transactions that are time sensitive in nature. However, the delivery of customer account statements to a third party presents no such concerns and therefore must require written customer consent for this delivery arrangement.

b. Written Instructions From Third Party or Account Holder of Joint Account

Two commenters raised practical concerns with procuring written instructions from customers.[56] FAF noted that some third parties such as RIAs or retirement custodians have a need to receive customer account statements in order to perform their duties for customers, and these third parties that commonly receive customer account statements may have their own paperwork or form that a customer completes to authorize a designated third party to receive account statements. FAF recommended adjusting the language in the proposed supplementary material to permit a firm

[49] *See Regulatory Notice* 09–64 (November 2009) (stating that while firms may allocate responsibility for complying with particular requirements between the clearing and the introducing firms, both firms must have policies and procedures in place to ensure that their respective responsibilities are met).

[50] *See* Edward Jones, FAF, Feaver, FSI, GSU, Malecki, NAELA, NASAA, PIRC, SIFMA, WFA, and Wulff.

[51] *See* Edward Jones, FAF, NASAA, and SIFMA.

[52] *See* Edward Jones and SIFMA.

[53] *See* Malecki and NASAA.

[54] *See* Edward Jones and SIFMA.

[55] *See supra* note 6.

[56] *See* FAF and SIFMA.

to treat a customer's completion of the third party's own paperwork or form as the written instructions from the customer, suggesting that this adjustment would represent a more practical approach to the process by permitting a firm to accept written instructions to authorize the transmission of account statements to a third party directly from such third party rather than from the customer directly. In the alternative, FAF recommended allowing firms to send account statements to third parties without customer consent ''by simply relying on the nature of the third party[,]'' reasoning that third parties such as RIAs or custodians of individual retirement accounts ''have a need to receive a duplicate statement of the client for the client's benefit.'' FINRA believes that FAF's recommendation does not assure the goal of limiting provision of customer account information to situations where the customer affirmatively instructed or consented to delivery of account statements to third parties. Moreover, FINRA believes that proposed Supplementary Material .02 in its current form would not preclude a customer from using a thirty party's form or other template to help a customer convey the written instructions directly to the firm to establish the delivery account statements to a third party such as an RIA or other custodian of customer assets.

With respect to accounts that have more than one owner, SIFMA noted that there could be significant operational challenges in requiring all joint account holders to consent to a third party delivery arrangement requested by one of the account holders. SIFMA expressed the belief that in such cases, a firm should be able to accept instructions from one accountholder to send statements to a third party, provided the accountholder making the request would not be seeking to suppress the delivery of customer account statements to the other joint accountholder(s) in accordance with the rule. FINRA believes that the proposed provision would contemplate the situation SIFMA described to require a customer, irrespective of the type of account—joint or individual—to provide written instructions to the firm to send account statements to a third party without affecting the delivery of account statements to the other joint accountholders.

c. Validation of Customer Instructions

Proposed Supplementary Material .02 does not specify the manner in which firms must validate a customer's written instructions or the nature of the relationship between the customer and third party receiving the account statements. Two commenters recommended ways to verify a customer's instructions and the nature of the customer's relationship to the third party.[57]

NASAA recommended rigorous verification of a customer's instructions by requiring a firm to obtain a medallion signature guarantee or notarization to help ensure that a customer in fact wishes to have the account statements delivered to a third party. NASAA also recommend requiring the firm to provide the customer with notices, delivered on the same frequency as account statements, indicating that the account statements have been delivered to the third party pursuant to the customer's instructions, and directing the customer to contact the firm to inform the firm if he or she no longer desires to have the account statements delivered to the designated third party. Feaver seemed to express support for a customer's ability to send account statements to a third party, but also seemed to suggest that some verification or confirmation practices as to the identity of the third party be imposed. Malecki expressed its support for the ability for a customer to elect to have account statement delivered to a third party, noting that the ability for a family member, tax professional, estate lawyer or trusted friend to be able to obtain copies of statements may be important to quickly identify and prevent fraud. However, Malecki suggested that the proposed provision go further and require a firm to identify the relationship between the customer and the third party receiving the account statements in order to clearly delineate the roles of the respective parties, noting that a firm should clearly understand the third party's relationship to the customer.

FINRA believes that a firm's obligation to conduct the requisite validation pertaining to servicing a customer's account are addressed under Rule 2090 (Know Your Customer). Rule 2090 requires a firm to use reasonable diligence in regard to the opening and maintenance of every account, to know the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer. The ''essential facts'' to ''knowing the customer'' include, among other things, those facts required to act in accordance with any special handling instructions for the account and understand the authority of each person acting on behalf of the customer. Thus, under Rule 2090, member firms are generally required to know the names of any persons authorized to act on behalf of a customer and any limits on their authority that the customer establishes and communicates to the member firm.

d. Exception to the Requirement To Obtain Instructions From Customer

As noted above, proposed Supplementary Material .02 would clarify that notwithstanding the general requirement for a firm to obtain written instructions from the customer to transmit accounts statements to a third party, a firm may provide such statements under Rule 2070, Rule 3210, or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rules or regulations.

SIFMA expressed its appreciation for this clarification, but stated that the exception should be broadened to permit firms to send customer account statements to an employer that is a registered investment company or RIA, both of which are also required to obtain this information about their associated person's personal securities dealings under Rule 17j–1 under the Investment Company Act of 1940[58] and the provisions of an investment advisor's code of ethics as required by Rule 204A–1 under the Investment Advisors Act of 1940,[59] respectively. In response to this comment, FINRA has adjusted the language in proposed Supplementary Material .02 to refer, in general terms, to other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rule.

C. The Requirement To Continue Delivery of Account Statements to Customer Even With Third Party Delivery Arrangement in Place

Consistent with the *Notice* 14–35 Proposal, the proposed rule change would limit a customer's ability to decline receiving account statements by requiring a firm to continue sending account statements to the customer even where the customer directs the firm, in writing, to send the customer's account statements to a third party. This general requirement is intended to serve investor protection functions by ensuring that the customer is able to monitor and verify the transactions occurring in the customer's account. The proposed provision accords with

[57] *See* Malecki and NASAA.

[58] 17 CFR 270.17j–1.

[59] 17 CFR 275.204A–1.

the Commission's policy view in the context of the delivery of transaction confirmations to a third party (*e.g.,* a fiduciary); that is, where a customer has duly waived receipt of confirmations, the customer may not waive the receipt of periodic account statements.[60]

With the exception of GSU favoring the continuous statement delivery requirement, several other commenters expressed concerns with it, asserting, in general, that the proposed provision would undermine a customer's express wishes to decline receiving account statements and would not further customer protections by increasing the risk for fraudulent activity, particularly for investors who are elderly, disabled or incapacitated, or who rely on a caregiver in an assisted living facility or at home.[61] SIFMA offered several suggestions for FINRA to consider, including to delete the proposed general continuous delivery requirement or in the alternative, follow the existing approach under NYSE Rule 409T(b). Other suggestions included creating exceptions to the general delivery requirement under specified circumstances (*e.g.,* incapacitation) [62] or permitting a customer to opt-out of receiving statements.[63] The comments to proposed Supplementary Material .02 as presented in the *Notice* 14–35 Proposal are set forth below.

a. The Existing Approach Set Forth Under NYSE Rule 409T(b)

As described above, NYSE Rule 409T(b) currently allows a customer to instruct a firm to direct account statements, confirmations or other communications to a third party holding a POA over the account where the customer either provided the firm written instructions or the firm continued to send the customer duplicate copies of the statements, confirmations or other communications. Thus, under NYSE Rule 409T(b), a customer who has declined or waived the receipt of account statements may then effectively forego the opportunity to directly monitor account activities.

SIFMA noted that in the SEA Rule 10b–10 Release, the Commission did not invalidate NYSE Rule 409T(b). However, when discussing the application of the Commission's policy and its relationship with NYSE Rule 409T, the Commission suggested that NYSE Rule 409T was less restrictive than the Commission's policy view by noting that under NYSE Rule 409T, a customer ''who waived receipt of the immediate confirmation would receive more information with his quarterly account statement than that currently required under NYSE Rule [409T]. To the extent the rule of the NYSE, or any self-regulatory organization, conflict with the Commission's stated policy, the more restrictive requirement would govern. Thus, an NYSE member wishing to take advantage of a waiver would be required to adhere to these Commission requirements in addition to any obligations imposed by Rule [409T]'' [64]

SIFMA observed that proposed Supplementary Material .02 would be more restrictive than NYSE Rule 409T(b), particularly as applied to the delivery of account statements in connection with the custody of advisory accounts, noting that duplicate account statements are not required to be sent to customers when a designee has been appointed under Rule 206(4)–2 of the Investment Advisers Act of 1940 (''Advisers Act'').[65] SIFMA expressed the belief that NYSE Rule 409T(b) has served both the investing public and the industry well, and that FINRA has not established widespread complaints or problems in this area that would justify such a substantial, potentially risky, and costly expansion of account statement delivery obligations. SIFMA urged FINRA to delete the general requirement or alternatively, retain the more flexible approach in NYSE Rule 409T(b). By taking the approach in NYSE Rule 409T(b), SIFMA expressed the view that firms would then be able to honor the requests of customers, and those with appropriate legal standing on behalf of their customers, to direct account statements to a designated third party and avoid the additional costs and potential account security concerns associated with sending account statements to the customer's address of record. SIFMA recommended that FINRA amend proposed Supplementary Material .02 to model the requirements of NYSE Rule 409T(b) by replacing ''and'' with ''or'' in the proposed rule text to provide firms with greater flexibility to comply with the proposed rule and defining the term ''customer,'' for purposes of proposed Supplementary Material .02 to mean a person with the legal authority to act on behalf of an accountholder, including an attorney-in-fact, a court-appointed fiduciary or person with similar legal authority.

SIFMA also noted that firms are currently subject to rules that mitigate concerns that a customer might be financially exploited by an individual who has authority over the customer's financial affairs. For example, SIFMA stated that Rule 2090 requires a firm to use reasonable diligence in regard to the opening and maintenance of every account, to know the essential facts concerning every customer, and essential facts would include those about anyone who has authority over a customer's account. In addition, SIFMA noted that a firm is required to have reasonable procedures in place to identify and react to ''red flags'' that might indicate the occurrence of potential fraud.

b. Create Exceptions to the General Requirement To Continue Delivery of Account Statements to Customer

In the *Notice* 14–35 Proposal, FINRA requested comment on the situations that would merit an exception from the general requirement to continue delivery of account statements to a customer. Several commenters expressed views on the general requirement for a firm to continue delivering account statements to the customer even where there is a third party delivery arrangement in place, stating that imposing such a requirement as a matter of course would increase a customer's risk of exposure to fraud or other misconduct.[66] FINRA recognizes that in some cases, it may not be in the customer's interest to continue receiving account statements when there is an arrangement to deliver the statements to a third party. In response to comments, FINRA has adjusted

[60] In adopting amendments to SEA Rule 10b–10 in 1994, the Commission acknowledged that a customer may waive the personal receipt of an immediate confirmation in the context of where a fiduciary has discretion over the customer's account under the following conditions: ''the broker-dealer must (1) obtain from the customer a written agreement that the fiduciary receive the immediate confirmation; and (2) send to the customer a periodic report, not less frequently than quarterly, containing the same information that would have been contained in an immediate confirmation. [Citation omitted]. The customer may not waive this periodic report. [Citation omitted].'' *See* Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612, 59614 (November 17, 1994) (''SEA Rule 10b–10 Release''). As indicated in the Amended Rule Filing, FINRA reiterates the reminder to members that they remain subject to any conditions or requirements specified in any release, interpretation, ''no-action'' position or exemption issued by the SEC or its staff in the context of SEA Rule 10b–10 that members may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.,* the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and Rule 2231, as proposed herein, is not intended to alter any such conditions or requirements.

[61] *See* Edward Jones, FSI, NAELA, NASAA, SIFMA, WFA, and Wulff.

[62] *See* SIFMA and Wulff.

[63] *See* PIRC.

[64] *See* SEA Rule 10b–10 Release, *supra* note 60, at 59 FR 59614 n.36.

[65] 17 CFR 275.206(4)–2.

[66] *See* Edward Jones, FSI, NASAA, SIFMA, WFA, and Wulff.

proposed Supplementary Material .02 as presented in the *Notice* 14–35 Proposal by creating an exception that would permit a ''court-appointed fiduciary'' (as that term is described in the proposed provision) to stop sending account statements to the customer upon written instructions from the court-appointed fiduciary, and other specified conditions. Absent a court-appointed fiduciary, a firm cannot cease delivering account statements to a customer. Further, FINRA believes that a customer may authorize the firm to satisfy the requirement to continue delivering account statements through electronic delivery consistent with proposed Supplementary Material .03, which would eliminate the need for delivery of physical statements to the customer's home, while still providing the customer the opportunity to review their account statements in a timely manner. FINRA believes that proposed Supplementary Material .02, as adjusted, creates an appropriate balance between investor protection and the concerns raised by the commenters. As set forth below, some commenters described a variety of circumstances that should warrant an exception to the general requirement. These circumstances relate to customers with legal representatives and other trusted contacts; customers who are elderly, disabled or incapacitated; and foreign and high net worth customers.

(I) Legal Representative and Other Trusted Contacts

SIFMA expressed concern that proposed Supplementary Material .02 could potentially erode the legal authority of the person granted a POA and may potentially create a conflict with state laws governing POAs. SIFMA noted that 17 states have laws that outline penalties for financial institutions that refuse to respect the legal standing of a person acting with the authority of a POA. Two commenters expressed concern that the proposed provision would also prevent the operability of a springing POA or limit its usefulness because a springing POA only becomes effective under certain circumstances outlined by the customer.[67] SIFMA added that the proposed provision would create a situation where a person with the power to stand in the shoes of the incapacitated person, and perform many other aspects of his or her legal rights, would not be able to redirect mail away from an address at which the incapacitated person once resided. Two commenters indicated that an exception should also be made for legal executors of a decedent's estate or for a person with legal authority to act on behalf of a customer.[68] FAF expressed concern that the proposed provision does not create an exception for certain third parties, such as investment advisers, trust departments, custodians and pension plan trustees. FAF indicated that these entities need to receive customer accounts statements to perform their duties for the customer.

(II) Elderly, Disabled or Incapacitated Customers

Several commenters contended that mandating the delivery of account statements to a customer who is deemed incapacitated or impaired, living in a nursing facility or receives in-home care, or an elderly customer who has expressly designated another person or entity to receive the statements would increase the risk of unintended or involuntary exposure of financially sensitive information to third parties.[69] Wulff noted that these persons would involuntarily have their financial affairs and personally identifiable information exposed to unvetted third parties. PIRC recommended that a customer be permitted to opt-out, in writing, of receiving account statements, particularly where the customer is disabled or incapacitated, or a customer resides in a nursing home facility. Two commenters stated that this class of investors should be able to decline delivery of their statements and instead have them delivered to an authorized third party.[70] Edward Jones recommended that FINRA consider an exemption to the general requirement where a firm has received written documentation from a medical professional verifying the disability or incapacity of the customer. Several commenters expressed the view that the preference of the customer, as to his or her own best interests, should govern.[71]

(III) Foreign and High Net Worth Customers

SIFMA raised similar concerns with respect to foreign or high net worth customers who would also be at risk of exposure of their financial information since in some foreign jurisdictions, mail delivery may not be secure, and a display of wealth may put such customers at risk of harm (*e.g.,* kidnapping for ransom). SIFMA noted that high net worth customers do not want sensitive information contained within statements to be delivered to their homes because of unique challenges such as frequent travel or multiple homes and, as such, often delegate the handling and review of statements to a trusted agent or third party, who may not be a legal representative of the customer. While Rule 3150, incorporated under proposed Supplementary Material .04, cites safety or security concerns as examples of acceptable reasons for a customer's written instruction to ''hold mail,'' SIFMA noted that the circumstances described above are not ''hold mail'' arrangements under Rule 3150. SIFMA indicated that arrangements to deliver statements to a third party for similar reasons should be permitted with written customer instruction.

D. Operational Concerns and Implementation of Proposed Supplementary Material .02

Two commenters requested prospective application of the provision.[72] Edward Jones stated that requiring remediation of existing accounts would impose significant costs and would not provide meaningful additional protection to investors. SIFMA emphasized the need for prospective application due to material operational challenges, which include persons who have become incapacitated since providing the original instruction to direct mail to a third party, as well as the significant costs associated with remediating hundreds of thousands of account relationships. The proposed rule change would apply prospectively, and FINRA intends to give member firms sufficient time to comply with the proposed rule change.[73]

[67] *See* SIFMA and WFA.

[68] *See* FSI and Wulff.

[69] *See* Edward Jones, FSI, NASAA, SIFMA, WFA, and Wulff.

[70] *See* Edward Jones and FSI.

[71] *See* FSI, PIRC, and Wulff.

[72] Edward Jones and SIFMA.

[73] A member firm with a customer having a pre-existing arrangement to deliver account statements to a third party that was established before the effective date of proposed Rule 2231.02 would not be subject to the requirements of the proposed new rule solely with respect to such account until that pre-existing third party delivery arrangement is modified in any manner. Where any existing or new customer of the firm seeks to establish a third party delivery arrangement on or after the effective date of proposed Rule 2231.02, the firm would be subject to the terms of the new rule. Relatedly, in connection with its support for the proposed rule change to eliminate NYSE Rule Interpretation 409T(a)/03, SIFMA requested that FINRA confirm in a rule release commentary or an adopting *Regulatory Notice* that though the conditions in NYSE Rule Interpretation 409T(a)/03 would no longer apply, firms may continue to rely on this NYSE interpretation for preexisting agreements that use third party agents. The proposed rule change is not intended to impact preexisting agreements that use third party agents if they comport with applicable FINRA rules and guidance.

6. Proposed Supplementary Material .03 (Use of Electronic Media To Satisfy Delivery Obligations)

Proposed Supplementary Material .03 would allow a firm to satisfy its account statement delivery obligations under Rule 2231 by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes. As stated above, this provision is consistent with prior guidance FINRA has issued on the use of electronic media to satisfy delivery obligations.[74]

SIFMA asserted that the cost burden associated with this new requirement would be particularly severe for members where customers have not elected to receive electronic account communications. GSU supported the use of electronic delivery of account statements only if the customer affirmatively elects that option on the basis that a customer who is not technologically savvy might not know how to electronically opt-out of an electronic statement policy, creating confusion as well as the possibility of a customer not being able to access his or her statements. The Center for Copyright Integrity urged that customer account statements should be delivered in paper form only on the belief that paper format will keep customers better informed on the contents of their files.

Proposed Supplementary Material .03 does not mandate the use of electronic media to deliver account statements, but permits a firm to do so subject to the standards established by the SEC. A firm may be able to evidence satisfaction of delivery obligations, for example, by obtaining the intended recipient's informed consent to deliver through a specified electronic medium and ensuring that the recipient has appropriate notice and access. SEC guidance describes ''informed consent'' as one that specifies the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, and describes the information that will be delivered using such means.[75] FINRA notes that proposed Supplementary Material .03 is not intended to impose any new delivery obligations beyond existing requirements.

7. Proposed Supplementary Material .05 (Information To Be Disclosed on Statement)

Proposed Supplementary Material .05, derived largely from NYSE Rule Interpretation 409T(a)/02, including note 1, would specify the information that must be clearly and prominently disclosed on the front of a customer account statement, *i.e.,* the identity of the introducing and carrying organizations, that the carrying organization is a member of SIPC, and the opening and closing account balances for the customer's account.

Two commenters expressed views on the appearance of SIPA disclosures on account statements.[76] GSU indicated its support for the requirement to provide the SIPA disclosure on the front of an account statement because doing so would aid smaller investors to seek the help they might need in order to better understand their statements and monitor their accounts. PIRC recommended that FINRA provide guidelines with respect to how the SIPA disclosure should appear on an account statement, citing as an example, that FINRA should consider requiring firms clearly highlight the SIPA disclosure to prevent firms from ''burying SIPA disclosures in the back of accounts statements or in the fine print, which customers may not be able to locate easily.''

FINRA believes that proposed Supplementary Material .05 gives member firms adequate guidance and allows flexibility in providing this information while also ensuring that the SIPC status of the clearing firm is disclosed on the front of the statement.[77]

8. Use of Logos, Trademarks, etc. (Proposed Supplementary Material .07)

Proposed Supplementary Material. 07 incorporates, without substantive change, NYSE Rule Interpretation 409(a)/05, which governs the use of trademarks and logos of other persons on account statements by requiring that firms not use the logo, trademark or other similar identification of a person (other than the introducing firm or clearing firm) on a customer account statement in a manner that is misleading or causes customer confusion. SIFMA requested clarification as to what logos, trademarks, and other similar identification would be ''misleading'' to customers or cause ''customer confusion.'' To the extent commenters have questions about the application of the proposed rule to particular facts and circumstances, FINRA will work with the industry to address interpretive issues as needed.

9. Other Comments

SIFMA requested confirmation that unless a customer requests otherwise, a firm may combine account statements for accounts of two or more customers sharing the same address in the same envelope addressed to one member of the household. In the SEC Householding Release, the SEC stated that it was adopting the ''householding'' rules because ''the distribution of multiple copies of the same document to security holders who share the same address often inundates security holders with unwanted mail and causes the company to incur higher than necessary printing and mailing costs.'' [78] To avoid duplication, the SEC rule allows funds to deliver a single copy of the same document to investors who share the same address.[79] FINRA has not formally provided guidance on the issue of ''householding'' customer account statements and believes that the commenter raises an issue that is outside the scope of this proposed rule change. As such, FINRA believes that the questions raised by SIFMA requires further discussion with the industry and investors to better understand the relevant facts and circumstances.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such proposed rule change, or

[74] *See supra* note 20.

[75] *See supra* note 20.

[76] *See* GSU and PIRC.

[77] Rule 2266 (SIPC Information) requires all member firms, unless they are excluded from SIPC membership and are not SIPC members, or whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such member firms also must provide SIPC's website address and telephone number, and provide all customers with the same information, in writing, at least once each year.

[78] *See* Securities Act Release No. 7912 (October 27, 2000), 65 FR 65736 (November 2, 2000) (''SEC Householding Release'').

[79] *See* Rule 154 (Delivery of prospectuses to investors at the same address) under the Securities Act of 1933. 17 CFR 230.154. *See also* SEA Rule 14a–3 (Information to be furnished to security holders). 17 CFR 240.14a–3. Rules 154 and 14a–3 permit the ''householding'' of prospectuses, annual reports, investment company semi-annual reports, and proxy statements or information statements to investors who share an address. Firms must obtain affirmative consent from investors or may rely on a finding of implied consent, subject to the conditions outlined in the Rule.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2021–024 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2021–024. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2021–024 and should be submitted on or before October 27, 2021.

[80] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[80]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21767 Filed 10–5–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93223; File No. SR–NYSEAMER–2021–40]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 7.12E

September 30, 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 September 30, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 7.12E to the close of business on March 18, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 7.12E to the close of business on March 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 7.12E, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 7.12E (a)–(d)).[4] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[5] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 7.12E to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9] The Exchange then filed to extend the pilot for an additional year to the close of business on October 18, 2020,[10] and later, on October 18, 2021.[11]

The Exchange now proposes to amend Rule 7.12E to extend the pilot to the close of business on March 18, 2022. This filing does not propose any substantive or additional changes to Rule 7.12E.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[12]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[13] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[14]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the New York Stock Exchange LLC's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the Exchange's affiliate, the New York Stock Exchange (''NYSE''), proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[15] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[16] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on March 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSEAmex–2011–73) (Approval Order); and 68787 (January 31, 2013), 78 FR 8615 (February 6, 2013) (SR–NYSEMKT–2013–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of a Rule Change to Exchange Rule 80B—Equities).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[9] *See* Securities Exchange Act Release No. 85564 (April 9, 2019), 84 FR 15269 (April 15, 2019) (SR–NYSEAMER–2019–14).

[10] *See* Securities Exchange Act Release No. 87025 (September 19, 2019), 84 FR 50527 (September 25, 2019) (SR–NYSEAMER–2019–37).

[11] *See* Securities Exchange Act Release No. 90135 (October 8, 2020), 85 FR 65100 (October 14, 2020) (SR–NYSEAMER–2020–74).

[12] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

[13] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[17] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 7.12E is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional five months would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

[18] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the pilot Rules' effectiveness to the close of business on March 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

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) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2021–40 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–2021–40. 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

[24] 15 U.S.C. 78s(b)(2)(B).

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–2021–40 and should be submitted on or before October 27, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21773 Filed 10–5–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93218; File No. SR–CboeBZX–2021–059]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Exempt Certain Categories of Investment Companies Registered Under the Investment Company Act of 1940 From the Requirement To Obtain Shareholder Approval Prior to the Issuance of Securities in Connection With Certain Acquisitions of the Stock or Assets of an Affiliated Registered Investment Company

September 30, 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 September 22, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] 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 BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to exempt certain categories of investment companies registered under the Investment Company Act of 1940 (the ''1940 Act'') from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 14.10(e)(1)(A) and (E) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The proposal is substantially similar to a recent rule change made by NYSE Arca, Inc. (''Arca'').[5] The Exchange also proposes to make structural changes to Rules 14.10(e)(1)(A) and (E).

By way of background, Exchange Rule 14.10(i)(1) requires issuers to obtain shareholder approval in connection with the acquisition of the stock or assets of another company, in the following circumstances:

(A) Where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

(1) The common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

(2) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or

(B) any director, officer or Substantial Shareholder (as defined by Rule 14.10(i)(5)(C)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

Exchange Rules 14.10(e)(1)(A) and 14.10(e)(1)(E) exempt certain categories of issuers from certain corporate governance requirements.

Now, the Exchange proposes to amend Rules 14.10(e)(1)(A) and 14.10(e)(1)(E) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to comply with Rule 14.10(i)(1) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a–8[6] (Mergers of affiliated companies) (''Rule 17a–8'') under the 1940 Act and does not otherwise require shareholder approval under the 1940 Act and the rules thereunder or any other Exchange rule.[7] Specifically, the

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act No. 91901 (May 14, 2021) 86 FR 27487 (May 20, 2021) (SR–NYSEArca–2020–54) (Order approving of a proposed rule change, as modified by amendment no. 2, to amend NYSE Arca Rule 5.3E to exempt registered investment companies that list certain categories of securities defined as derivative and special purpose securities under NYSE Arca Rules from having to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of an affiliated registered investment company (the ''Arca Approval Order'').

[6] 17 CFR 270.17a–8.

[7] The Exchange proposes to exempt both Portfolio Depository Receipts (Rule 14.11(b)) and certain management investment companies that are Index

Continued

Exchange proposes to exempt from the shareholder approval provision described herein Portfolio Depository Receipts, as provided under Rule 14.11(b), as well as management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares as defined in Rules 14.11(c), 14.11(i), 14.11(k), 14.11(l), and 14.11(m), respectively.[8]

In general, the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or asset of another company is designed to give existing shareholders a vote on the issuance of stock that may dilute their voting or economic rights. The Exchange notes that Exchange Rule 14.10(i)(1) is also intended to give shareholders a vote on transactions where a director, officer, or substantial shareholder of the listed company has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. For the reasons described below, as well as the protections embedded in Rule 17a–8, the Exchange believes that these concerns are limited with respect to 1940 Act Securities. Therefore, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from having to obtain shareholder approval under Exchange rules which can be both time consuming and expensive.

The Exchange believes that the potential economic and voting dilution concerns sometimes associated with a large share issuance are unlikely to be present when an issuer of a 1940 Act Security issues shares in connection with the acquisition of the stock or assets of an affiliated registered investment company. As described above, the proposed exemption will only apply to issuers of investment companies organized under the 1940 Act.[9] Sections 17(a)(1)–(2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons.[10] Rule 17a–8 provides an exemption from Sections 17(a)(1)–(2) for certain mergers of affiliated companies provided that the board of directors of each investment company, including a majority of the directors that are not interested persons, affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction.[11] Because the shares issued by the acquiring investment company are issued at a price equal to the fund's net asset value,[12] the board of directors is able to make an affirmative determination that the merger is not dilutive to existing shareholders.[13] With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange believes that the same provisions of Rule 17a–8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

Under Rule 17a–8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met. However, Rule 17a–8 does not require the surviving company (*i.e.,* the fund issuing shares in the merger) to obtain the approval of its shareholders. When the Commission proposed amendments to Rule 17a–8, it specifically sought comment on whether the outstanding voting securities of the fund that will survive the merger should also be required to approve the merger.[14] Importantly, the Commission ultimately did not include a requirement of approval of shareholders of the surviving company in its final rule.

Given that Rule 17a–8 does not require a surviving company issuer of 1940 Act Securities to obtain shareholder approval in the context of a merger of affiliated companies, the Exchange believes it is appropriate to exempt such issuers of 1940 Act Securities from having to comply with Exchange Rule 14.10(i)(1). As described above, the Exchange only proposes to exempt issuers of 1940 Act Securities from having to comply with Exchange Rule 14.10(i)(1) if they are issuing shares to acquire the stock or assets of an affiliated registered investment company. Notwithstanding the proposed exemption, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a–8 specifically noted that nothing in Rule 17a–8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.[15] Thus, an issuer of a 1940 Act Security may still be required to obtain shareholder approval in connection with the acquisition of the stock or assets of an affiliated company even if such transaction complies with Rule 17a–8 if such transaction would require shareholder approval under other applicable Exchange Rules, another

Fund Shares (Rule 14.11(c)), Managed Fund Shares (Rule 14.11(i)), Managed Portfolio Shares (Rule 14.11(k)), ETF Shares (Rule 14.11(l)), and Tracking Fund Shares (Rule 14.11(m)) (collectively, with Portfolio Depository Receipts, the ''1940 Act Securities''). Each of the listed categories are issued by an entity organized under the 1940 Act. In proposing this exemption, the Exchange notes that the adopting release for Rule 17a–8 specifically noted that nothing in Rule 17a–8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents. *See* Investment Company Act Release No. 25666 at Footnote 18.

[8] Index Fund Shares listed pursuant to Rule 14.11(c) are substantively similar to Investment Company Units listed pursuant to Arca Rule 5.2–E(j)(3). Similarly, Tracking Fund Shares listed pursuant Rule 14.11(m) are substantively similar to Active Proxy Portfolio Shares listed pursuant to Arca Rule 8.601–E.

[9] As of June 10, 2021, approximately 97% of securities listed on the Exchange are issued by investment companies registered under the 1940 Act.

[10] 15 U.S.C. 80a–17(a)(1)–(2). *See also* the definition of ''affiliated person'' in the 1940 Act at 15 U.S.C 80a–2(a)(3).

[11] 17 CFR 270.17a–8.

[12] The Exchange notes that the proposing releases for Rule 17a–8 specifically contemplated that, in certain circumstances, the price paid may deviate from a fund's net asset value due to adjustments for tax purposes. *See* Investment Company Act Release No. 25259 at Footnote 26.

[13] The Exchange notes that the shares are issued at a fund's net asset value when the fund is registered. Rule 17a–8 also includes requirements to protect against dilution when the fund to be acquired is unregistered. Notwithstanding these requirements applicable when a fund is unregistered, the Exchange's exemption will only apply when each fund that is a party to the merger is registered.

[14] See Investment Company Act Release No. 25259 at Section II(A)(2)(a): ''Should the outstanding voting securities of the fund that will survive the merger also be required to approve the merger?''

[15] *See* supra footnote 7.

provision of the 1940 Act or the rules and regulations thereunder, state law, or a fund's organizational documents.

Based on the above proposed changes, the Exchange proposes to restructure Rules 14.10(e)(1)(A) and (E). Specifically, the Exchange proposes to split Rule 14.10(e)(1)(A) into subparagraphs (i) and (ii). Subparagraph (i) will provide the current exemptions for asset-backed issuers and other passive issuers, while subparagraph (ii) will provide for the proposed exemption of Rule 14.10(i)(1) applicable to issuers of Portfolio Depository Receipts, as provided under Rule 14.11(b). The Exchange also proposes to split existing Rule 14.10(e)(1)(E) into subparagraphs (i), (ii), and (iii). Subparagraphs (i) and (ii) will provide the current exemptions for management investment companies, while subparagraph (iii) will provide for the proposed exemption of Rule 14.10(i)(1) applicable to certain categories of investment companies registered under the 1940 Act.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] 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)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors as protections afforded by Rule 17a–8, mean that (i) there is limited risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders have a reduced risk of being disenfranchised as a result of a Rule 17a–8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. Where the shares issued by the surviving investment company are issued at a price equal to the fund's net asset value, the board of directors is able to conclude that the interests of shareholders in such a transaction will not be diluted. With respect to voting dilution, the Exchange notes that holders of 1940 Act Securities have very limited voting rights, including no right to vote on the annual election of a board of directors.

The Exchange believes that the same provisions of Rule 17a–8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative determination that the transaction is in the best interest of its investment company that the transaction will not result in dilution for existing shareholders, there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a–8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from the requirements of Rule 14.10(i)(1)in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a–8 specifically noted that nothing in Rule 17a–8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.[19]

The Exchange believes it is not unfairly discriminatory to offer the exemption only to issuers of 1940 Act Securities completing a merger with an affiliated registered investment company, as opposed to all issuers of securities listed pursuant to Exchange Rule 14.11, because only 1940 Act Securities are subject to the requirements of the 1940 Act which offer the protections against dilution and self-dealing described herein.

Lastly, the Exchange believes that the proposal is reasonable as it is substantially similar to a recent rule amendment made by Arca.[20]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment will not impose any burden on competition, as they simply propose to offer 1940 Act Securities a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders. Further, the proposed rule change is substantively similar to Arca Rule 5.3E.

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.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See* supra footnote 7.

[20] *See* supra footnote 5.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) [23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will provide certain investment companies registered under the 1940 Act immediate relief from certain shareholder approval requirements if the conditions of the rule as described above are met. The Commission previously approved a substantively similar rule change on Arca and found it consistent with the Section 6(b)(5) of the Act.[25] For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[26]

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) [27] 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–CboeBZX–2021–059 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CboeBZX–2021–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–059, and should be submitted on or before October 27, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21769 Filed 10–5–21; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 complied with this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See supra* note 5.

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93221; File No. SR–NYSE–2021–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Proposing To Adopt Listing Standards for Subscription Warrants Issued by a Company Organized Solely for the Purpose of Identifying an Acquisition Target

September 30, 2021.

On August 24, 2021, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt listing standards for subscription warrants issued by a company organized solely for the purpose of identifying an acquisition target. The proposed rule change was published for comment in the **Federal Register** on September 10, 2021.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92876 (September 3, 2021), 86 FR 50748. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-45/srnyse202145.htm.*

[4] 15 U.S.C. 78s(b)(2).

proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 25, 2021.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates December 9, 2021 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2021–45).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21771 Filed 10–5–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93217]

Order Granting Application of Investors Exchange LLC for a Limited Exemption From Rule 602 of Regulation NMS for Its Retail Price Improvement Program

September 30, 2021.

By letter dated September 29, 2021 (the ''Application''),[1] Investors Exchange LLC (''IEX'' or ''Exchange'') requests a limited exemption from the requirements of Rule 602 of Regulation NMS [2] (the ''Quote Rule'') for its planned dissemination of a Retail Liquidity Identifier (''RLI'') to advertise the presence of non-displayed Retail Liquidity Provider (''RLP'') midpoint peg orders pursuant to recently approved enhancements to the Exchange's Retail Price Improvement Program (the ''Program'').[3]

In order to attract Retail orders to the exchange, IEX will notify market participants of the presence of RLP orders in a security by disseminating a RLI through the appropriate securities information processor and the Exchange's proprietary market data feeds when RLP order interest, aggregated to form at least one round lot for a particular security, is available on IEX, provided that the RLP order interest is resting at the midpoint of the national best bid and national best offer (''Midpoint Price'').[4] The RLI will indicate the symbol for a particular security and the side (buy, sell, or buy and sell) of the RLP interest, but not its explicit price or size.[5]

When the Commission adopted the Quote Rule (then Rule 11Ac1–1) it sought to facilitate the establishment of a comprehensive composite quotation system across market centers as an integral component of a national market system.[6] The Quote Rule requires national securities exchanges and national securities associations to, among other things, collect, process, and make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges that is communicated on any national securities exchange by any responsible broker or dealer.[7] Regulation NMS defines a ''bid'' or ''offer'' as the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

Other exchanges that operate retail liquidity programs also disseminate retail liquidity identifiers, though those other exchange programs typically allow the equivalent to RLP orders to rest non-displayed at prices that improve the displayed quote by one or more subpenny increments and do not require such orders to be pegged to the Midpoint Price.[8] IEX's Program is different because RLP orders can only be midpoint peg orders, which can only rest at the Midpoint Price.[9] Thus, unlike the retail liquidity identifiers disseminated by other exchanges, IEX's RLI will covey a specific ascertainable price (*i.e.,* the Midpoint Price).

IEX's RLI will serve a similar purpose to the identifiers currently disseminated by other exchanges, as it will inform market participants that route retail order flow about the availability of price improvement opportunities for retail orders. And, for IEX's Program specifically, the RLI will indicate the availability of midpoint priced interest, which can benefit retail investors by offering to them an opportunity for potentially substantial price improvement. IEX's Program, like other exchanges' retail liquidity programs, allows for the limited segmentation of retail order flow for the express purpose of allowing IEX to compete with other exchanges and off-exchange market makers to provide price improvement to retail customers, thus ensuring that retail customers can benefit from the better prices that liquidity providers are willing to give their orders.[10]

Under Rule 602(d) of Regulation NMS, the Commission may exempt from the provisions of the Quote Rule, either unconditionally or on specified terms and conditions, a national securities exchange (among others) if it determines

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] *See* Letter from Claudia Crowley, Chief Regulatory Officer, IEX, to David Shillman, Associate Director, Division of Trading and Markets, Commission, dated September 29, 2021.

[2] 17 CFR 242.602.

[3] *See* Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR–IEX–2021–06) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Revise the Definitions of Retail Orders and Retail Liquidity Provider Orders and Disseminate a Retail Liquidity Identifier under the IEX Retail Price Improvement Program) (''Order''). Under the amended Program, an IEX member that qualifies as a Retail Member Organization (''RMO'') can submit agency or riskless principal orders that reflect the trading interest of a natural person by using a ''Retail order'' modifier. *See* IEX Rule 11.190(b)(15) and its Supplementary Material .01 (defining ''Retail order''). Such Retail orders are only eligible to execute at the midpoint price of the national best bid and national best offer or better. In turn, any IEX member is able to provide price improvement to Retail orders through RLP orders. While RLP orders will only execute against Retail orders, Retail orders can execute against other types of available liquidity at the midpoint price or better (*e.g.,* regular midpoint peg orders or odd lot orders). *See* IEX Rule 11.190(b)(14) (defining ''Retail Liquidity Provider Order'').

[4] In addition, the Exchange will only disseminate an RLI when RLP interest is priced at least $0.001 better than the national best bid or national best offer. Because RLP orders are midpoint peg orders, they will be priced at least $0.001 better than the national best bid or national best offer except with respect to: (i) Locked or crossed markets and (ii) sub-dollar quotes when the security's spread is less than $0.002. *See* Securities Exchange Act Release No. 91523 (April 9, 2021), 86 FR 19912, 19915 (notice of IEX's proposal).

[5] The RLI will not disseminate an explicit size, but only the availability of at least one round lot of RLP interest; the actual available size of RLP interest may be more.

[6] *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978). Regulation NMS redesignated Rule 11Ac1–1 as Regulation NMS Rule 602, but left the substance of the rule largely intact. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37570 (June 29, 2005) (File No. S7–10–04).

[7] *See* 17 CFR 242.602(a)(1). The Quote Rule further provides that nothing shall preclude any national securities exchange from making available to vendors indications of interest or bids and offers for a subject security at any time such exchange is not required to do so. *See* 17 CFR 242.602(a)(4).

[8] *See, e.g.,* NYSE Arca Rule 7.33–E (Retail Liquidity Program).

[9] While the RLI will not include an explicit size, it will indicate the presence of at least one round lot of midpoint interest.

[10] *See* Order, *supra* note 2, 86 FR at 38168–69.

that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.[11]

The Commission hereby grants the Exchange a limited exemption from the Quote Rule to operate the Program and disseminate the RLI without having to include RLP interest in IEX's best bid or offer. For the reasons discussed below, the Commission has determined that it is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system to provide a limited exemption from Rule 602 of Regulation NMS with respect to IEX's Program.

In light of the opportunity for retail customers to obtain potentially substantial price improvement at midpoint prices under IEX's Program, and in the interests of facilitating the ability of IEX to compete to be able to provide that opportunity to Retail orders in the limited context of the Program, providing a limited exemption should promote competition between exchanges and between IEX and off-exchange market makers.

Broad dissemination of the RLI through the appropriate securities information processor should benefit retail customers by providing broker-dealers that route Retail orders with limited supplemental information about the availability of price improvement opportunities for Retail orders under the Program.[12] To the extent the RLI is successful in attracting Retail orders to the Program, the increased competition should benefit retail customers by providing a mechanism through which they can receive the better prices that liquidity providers are willing to give their orders. This exemption also should benefit market participants that seek the opportunity to interact directly with Retail orders, as any liquidity provider may submit RLP interest to provide better prices to retail customers on the Exchange. Quotations that Rule 602 requires to be included in an exchange's best bid and offer are used to establish the national best bid and offer for an NMS stock and are eligible for protection against trade-throughs under Rule 611 of Regulation NMS.[13] Such quotations therefore must be accessible to all market participants on terms that are not unfair or unreasonably discriminatory. In contrast, access to RLP interest is limited to Retail orders because many market participants may be willing to offer liquidity to retail investors at better prices than they would be willing to offer to all market participants. RLP interest thereby can benefit retail investors by giving them an opportunity to receive better prices on exchanges, but it is unsuitable for other purposes, including establishing a national best bid and offer and eligibility for Rule 611 protection.

Accordingly, *it is ordered,* pursuant to Rule 602(d) of Regulation NMS, that IEX is exempt from Rule 602 of Regulation NMS with respect to IEX's Program specifically concerning the dissemination of the RLI to advertise the presence of RLP interest under the Program without including RLP interest in the Exchange's quotation. This exemption is conditioned on the Exchange continuing to conduct the Program substantially as described in the Exchange's request for exemptive relief and the current applicable Exchange rules, including the dissemination of the RLI through the appropriate securities information processor. Any changes thereto may cause the Commission to reconsider this exemption. The foregoing exemption is subject to modification or revocation at any time if the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

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[11] 17 CFR 242.602(d).

[12] The RLI will not reveal the presence of other midpoint interest. Non-displayed midpoint interest could be present on IEX outside of the Program, and Retail orders will be able to trade with that interest.

[13] See 17 CFR 242.611.

[14] 17 CFR 200.30–3(a)(28).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93219; File No. SR–NASDAQ–2021–054]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify Nasdaq IM–5101–2 To Permit an Acquisition Company To Contribute a Portion of Its Deposit Account to Another Entity in a Spin-Off or Similar Corporate Transaction

September 30, 2021.

I. Introduction

On June 24, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Nasdaq IM–5101–2 to permit an acquisition company to contribute a portion of the amount held in its deposit account to a deposit account of a new acquisition company in a spin-off or similar corporate transaction. The proposed rule change was published for comment in the **Federal Register** on July 13, 2021.[3] On August 25, 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] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Generally, the Exchange will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92344 (July 7, 2021), 86 FR 36841 (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-054/srnasdaq2021054.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92751, 86 FR 48780 (August 31, 2021). The Commission designated October 11, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

business plan is to engage in a merger or acquisition with an unidentified company or companies.[7] However, the Exchange currently will permit the listing of a company whose business plan is to complete an initial public offering (''IPO'') and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (''Acquisition Company'' or ''SPAC''), if the company meets all applicable initial listing requirements, as well as certain conditions described in Nasdaq IM–5101–2.[8] Among other things, Nasdaq IM–5101–2 requires that at least 90% of the gross proceeds from the IPO and any concurrent sale by the Acquisition Company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an insured depository institution, or in a separate bank account established by a registered broker or dealer (collectively, a ''deposit account'').[9] In addition, Nasdaq IM–5101–2 requires that within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the Acquisition Company specifies in its registration statement, the Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.[10] Nasdaq IM–5101–2 further requires each business combination to be approved by a majority of the Acquisition Company's independent directors.[11] If the Acquisition Company holds a shareholder vote on a business combination, the business combination must be approved by a majority of the shares of common stock voting at the meeting and public shareholders voting against the business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated.[12] If a shareholder vote on a business combination is not held, the Acquisition Company must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e–4 and Regulation 14E under the Act, which regulate issuer tender offers.[13]

The Exchange now proposes to modify Nasdaq IM–5101–2 to allow a SPAC listed under that rule to contribute a portion of its deposit account to a deposit account of a new entity in a spin-off or similar corporate transaction (''SpinCo SPAC''). According to the Exchange, when a SPAC conducts its IPO, it raises the amount of capital that it estimates will be necessary to finance a subsequent business combination with its ultimate target; however, the Exchange believes that because a SPAC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target.[14] The Exchange states that it is proposing to modify Nasdaq IM–5101–2 to permit what it believes is a more efficient structure whereby a SPAC can raise in its IPO the maximum amount of capital it anticipates it may need for a business combination transaction and then ''rightsize'' itself by contributing any amounts not needed to a SpinCo SPAC, which would be subject to the provisions of Nasdaq IM–5101–2, in the same manner as the original SPAC, and spun off to the original SPAC's shareholders.[15]

Specifically, proposed Nasdaq IM–5101–2(f) would provide that a SPAC will be permitted to contribute a portion of the amount held in the deposit account to a deposit account of another entity (the ''Contribution'') in a spin-off or similar corporate transaction, subject to the following conditions:

(i) The requirements set forth in Nasdaq IM–5101–2(d) and (e) that shareholders of a SPAC must have the right to convert or redeem their shares of common stock into a pro rata share of the aggregate amount in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) at the times specified in such paragraphs may be based on the amounts in the deposit account of the SPAC at such times after having been reduced by the Contribution provided that, in connection with the Contribution, the SPAC's public shareholders shall have had the right, through one or more corporate transactions, to redeem a portion of their shares of common stock (or, if units were sold in the SPAC's IPO, units) for their pro rata portion of the amount of the Contribution in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(ii) the public shareholders of the SPAC receive shares or units of the SpinCo SPAC on a pro rata basis, except to the extent they have elected to redeem a portion of their shares of the SPAC in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(iii) the amount distributed to the SpinCo SPAC will remain in a deposit account for the benefit of the shareholders of the SpinCo SPAC in the same manner as described in Nasdaq IM–5101–2(a);

(iv) the SpinCo SPAC meets all applicable initial listing requirements, as well as the conditions described in Nasdaq IM–5101–2(a) through (e); it being understood that, following such spin-off or similar corporate transaction: (A) For purposes of Nasdaq IM–5101–2(b) the 80% described therein shall,[16] in the case of the SPAC, be calculated based on the aggregate amount remaining in the deposit account of the SPAC at the time of the agreement to enter into the initial combination after the Contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be calculated based on the aggregate amount in its deposit account at the time of its agreement to enter into its initial combination,[17] and (B) for purposes of Nasdaq IM–5101–2(d) and (e),[18] the right to convert and opportunity to redeem shares of common stock on a pro rata basis, respectively, shall, in the case of the SPAC, be deemed to apply to the aggregate amount remaining in the deposit account of the SPAC after the contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be deemed to apply to the aggregate amount in its deposit account;

(v) in the case of the SpinCo SPAC, and any additional entities spun off from the SpinCo SPAC, each of which will also be considered a SpinCo SPAC, the 36-month period described in Nasdaq IM–5101–2(b) (or such shorter period that the original SPAC specifies in its registration statement) will be calculated based on the date of effectiveness of the SPAC's IPO registration statement; and

(vi) in the aggregate, through one or more opportunities by the SPAC and one or more SpinCo SPACs, public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full

[7] *See* Nasdaq IM–5101–2.

[8] *See id.*

[9] *See* Nasdaq IM–5101–2(a).

[10] *See* Nasdaq IM–5101–2(b).

[11] *See* Nasdaq IM–5101–2(c).

[12] *See* Nasdaq IM–5101–2(d).

[13] *See* Nasdaq IM–5101–2(e).

[14] *See* Notice, *supra* note 3, at 36841. The Exchange further states that ''[t]his has resulted in the inefficient, current practice of SPAC sponsors creating multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target needs.'' *Id.*

[15] *See id.* The 36-month period to complete a business combination under Nasdaq IM–5101–2 would, however, be calculated for each SpinCo SPAC based on the date of the original SPAC's effective registration statement.

[16] See *supra* note 10 and accompanying text, for a description of the requirements of Nasdaq IM–5101–2(b).

[17] As the Exchange states, this amount would be calculated after giving effect to the SpinCo SPAC's contribution to a subsequent SpinCo SPAC, if any. See Notice, *supra* note 3, at 36842.

[18] See *supra* notes 12–13 and accompanying text, for a description of the requirements of Nasdaq IM–5101–2(d) and (e).

amount of the deposit account established by the SPAC as described in Nasdaq IM–5101–2(a) (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account).[19]

The Exchange states that, under the proposal, it expects that the new structure will be implemented in the following manner. If a listed SPAC (the ''Original SPAC'') determines that it will not need all the cash in its deposit account for its initial business combination, the Original SPAC will designate the excess cash for a new deposit account of a SpinCo SPAC (the ''SpinCo Deposit Account,'' and the amount retained in the deposit account of the Original SPAC, the ''Retained SPAC Deposit Account'').[20] The Exchange states that the amount designated for the SpinCo Deposit Account must continue to be held for the benefit of the shareholders of the Original SPAC until the completion of the spin-off transaction and, following the spin-off of the SpinCo SPAC to the Original SPAC's shareholders, the SpinCo Deposit Account would be subject to the same requirements as the deposit account of the Original SPAC.[21]

According to the Exchange, the SpinCo SPAC would file a registration statement under the Securities Act of 1933 for purposes of effecting the spin-off of the SpinCo SPAC and, prior to the effectiveness of the registration statement, the Original SPAC would provide its public shareholders through one or more corporate transactions with the opportunity to redeem a pro rata amount of their holdings equal to the amount of the SpinCo Deposit Account divided by the per share amount in the Original SPAC's deposit account (the ''redemption price'').[22] The Exchange further states that, after completing the tender offer for the redemption and the effectiveness of the SpinCo SPAC's registration statement, the Original SPAC would contribute the SpinCo Deposit Account to a deposit account held by the SpinCo SPAC in exchange for shares or units of the SpinCo SPAC, which the Original SPAC would then distribute to its public shareholders on a pro rata basis through one or more corporate transactions pursuant to the SpinCo SPAC's effective registration statement.[23]

According to the Exchange, the Original SPAC would then continue to operate as a SPAC until it completes its business combination and would offer redemption rights to its public shareholders in connection with that business combination in the same manner as a traditional SPAC, while the SpinCo SPAC would operate in the same manner as a traditional SPAC, except that it could effect a subsequent spin-off prior to its business combination like the Original SPAC.[24] The Exchange states that if SpinCo SPAC does not elect to effect a spin-off, it would proceed to complete an initial business combination and offer redemption rights in connection therewith like a traditional SPAC.[25]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2021–054 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[26] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,[27] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities 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 to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[28]

As described above, the proposal would allow a SPAC listed under Nasdaq IM–5101–2 to contribute a portion of the amount held in its deposit account to the deposit account of a SpinCo SPAC. The Exchange states that the proposal would permit a more efficient structure because a SPAC often raises an amount of capital through its IPO that is not optimal for the needs of a specific acquisition target.[29] According to the Exchange, this has resulted in SPAC sponsors creating multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular acquisition target needs.[30] The Exchange believes this practice creates the potential for conflicts of interest, fails to optimize the amount of capital that would benefit the SPAC's public shareholders and a business combination target, creates inefficiencies, and can lead to confusion.[31] Accordingly, the Exchange believes the proposal would provide shareholders the opportunity to invest with a sponsor without spreading that investment across the sponsor's multiple SPACs.[32]

The Commission received comments broadly supporting the proposed rule change. Specifically, one commenter stated that the proposed rule change would introduce a ''more efficient, cost-effective[,] and flexible'' structure than provided for by the current SPAC listing rules, ''while continuing to offer significant and appropriate protections to SPAC investors.'' [33] This commenter further argued that shareholders' ability under the proposed rule change to redeem their investment in connection with each specific business combination by the Original SPAC or a SpinCo SPAC would both increase flexibility and

[19] Proposed Nasdaq IM–5101–2(f) provides that the conditions set forth in the proposed rule would similarly apply to successive spin-offs or similar corporate transactions, ''mutatis mutandis.''

[20] *See* Notice, *supra* note 3, at 36841–42.

[21] *See id.* at 36842.

[22] *See id.* According to the Exchange, the redemption could occur, for example, through a partial cash tender offer for shares of the Original SPAC pursuant to Rule 13e–4 and Regulation 14E of the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original SPAC for the purpose of facilitating the redemption. *See id.* at 36842 n.4.

[23] *See id.* at 36842.

[24] *See id.* The proposed rule would provide that, for purposes of Nasdaq IM–5101–2(b), the Original SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the Retained SPAC Deposit Account, after the contribution to the SpinCo SPAC, at the time of its agreement to enter into its initial combination. Nasdaq further states that, similarly, a SpinCo SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the SpinCo Deposit Account at the time of its agreement to enter into its initial combination after giving effect to its contribution to any subsequent SpinCo SPAC.

[25] *See id.*

[26] 15 U.S.C. 78s(b)(2)(B).

[27] *Id.*

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Notice, *supra* note 3, at 36841.

[30] *See id.*

[31] *See id.*

[32] *See id.* at 36842.

[33] *See* letter from Kellen Carter, ARK Investment Management LLC, to Vanessa Countryman, Secretary, Commission, dated August 2, 2021, at 1–2.

investors' ability to understand the companies that a SPAC plans to acquire and the risks associated with each such target company.[34] Another commenter similarly argued that the proposed rule change would permit a more efficient SPAC structure while ''maintaining all of the investor protections'' in the current SPAC listing rules.[35]

The Commission has concerns, however, about whether the proposal is sufficiently designed to protect investors and the public interest, as required by Section 6(b)(5) of the Act. First, the Commission is concerned that proposed Nasdaq IM–5101–2(f) would circumvent the current requirements of Nasdaq IM–5101–2 that the Commission previously found were designed to protect investors.[36] Specifically, Nasdaq IM–5101–2(b) requires a SPAC to complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account.[37] This 80% requirement sets a minimum size of a business combination that investors will be aware of from their initial investment. In addition, the 80% requirement ensures that the founders of the SPAC will not seek a very small SPAC target solely to ensure they successfully complete a business combination in order to break escrow and thereby earn their payment (promote) for finding a target. The proposal could potentially allow a SPAC to engage in multiple business combinations that are very small in size as compared to the original amount in the deposit account. The proposal also does not include any limitations with respect to the amount a SPAC may contribute to a SpinCo SPAC and thereby reduce its escrow account. Moreover, it appears the proposed structure could potentially incentivize SPAC founders to complete smaller business combinations in cases where they cannot identify a target company of sufficient size to meet the 80% requirement with respect to the Original SPAC, thereby leaving investors with a choice of whether to accept an investment in a smaller-sized company than originally contemplated or a partial redemption of their original investment from the reduced deposit account. The Commission is concerned that allowing SPACs to engage in such transactions effectively eliminates the original 80% requirement, may subvert investor expectations regarding a SPAC's future business combination prospects, and may benefit the founders of SPACs at the expense of retail investors.[38] In this regard, the Commission is concerned that the Exchange has not provided sufficient justification regarding how its proposal is consistent with the protection of investors, including the investor protection measures that were originally contemplated by Nasdaq IM–5101–2 and which the Commission found to be consistent with the Act.[39]

Furthermore, the Commission believes the proposal could introduce additional complexity to SPAC securities, particularly for retail investors. While the market in SPAC securities is already complex, the Exchange's proposal would allow for the listing of SPACs that may spin-off into smaller and smaller SPACs, each presenting additional risks and considerations to investors that may not be fully realized at the time of the Original SPAC's IPO or at the time of each spin-off transaction when investors have the opportunity to receive shares in the SpinCo SPAC or redeem their pro-rata portion of the SpinCo SPAC Contribution.[40] Further, although the Exchange states the proposal is expected to allow a SPAC that determines that it will have excess cash following its initial business combination to spin-off those funds to a new SPAC,[41] the proposal is not limited to this particular situation and would allow a SPAC to break escrow to create new SpinCo SPACs at any time after its IPO, regardless of whether any potential business combination has been identified.[42] Moreover, under current SPAC rules, investors have to make one determination on whether to redeem their shares or retain ownership in the combined operating business after a business combination that has an aggregate fair market value of at least 80% of the value of the deposit account. In contrast, under the proposal, investors would have to make multiple decisions on whether to hold or redeem their securities in potentially multiple SpinCo SPACs, and those investors that choose to redeem may not be made whole as to their original investment until a subsequent business combination of the Original SPAC and/or the SpinCo SPACs occur. Additionally, the proposal raises concerns about whether investors are adequately protected when only the sponsors, not shareholders, are participating in the decision to reduce the deposit account and contribute those funds to the SpinCo SPAC.[43] For these reasons, the Commission is concerned that investors may not have adequate information at the time they initially invest in the Original SPAC and at the time they are required to make decisions regarding whether to invest in the SpinCo SPACs or to redeem their investment, which can occur multiple times over the term of the Original SPAC, raising investor protection concerns under Section 6(b)(5) of the Act.

The Commission is also concerned that certain aspects of the proposed rule change are vague and unclear and may raise additional investor protection

[34] *See id.* at 2.

[35] *See* letter from White & Case LLP to Vanessa Countryman, Secretary, Commission, dated August 3, 2021, at 1.

[36] *See* Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (Order Granting Approval to Proposed Rule Change, as modified by Amendment No. 1, to Adopt Additional Initial Listing Standards to list Securities of Special Purpose Acquisition Companies) (NASDAQ–2008–013) (''2008 Order'').

[37] The deposit account must contain at least 90% of the gross proceeds from the SPAC's IPO and any concurrent sale by the SPAC of equity securities. *See* Nasdaq IM–5101–2(a).

[38] Moreover, the proposal does not appear to be limited to future SPACs and could potentially allow existing SPACs to engage in spin-offs. The Commission believes that permitting existing SPACs to engage in such transactions could raise investor protection issues given that investors who initially invested in the SPACs would not have been aware that the SPAC would not have to comply with the 80% requirement and could spin off into multiple SpinCo SPACs.

[39] *See* 2008 Order, *supra* note 28. In addition, the proposal appears to require redeeming shareholders to effectively pay deferred underwriting fees by deducting those fees from the aggregate redemption amount available to shareholders. *See* proposed Nasdaq IM–5101–2(f)(vi). This is not required for the Original SPAC as set forth under current Nasdaq IM–5101–2(d) and (e) and would result in the redeeming shareholders potentially receiving less than 90% of the gross proceeds from the deposit account. Under the current SPAC listing rules, only taxes payable and amounts distributed to management for working capital purposes can be excluded from the aggregate amount in the deposit account.

[40] For example, under the proposal it would be difficult for an investor to know at the time of its investment in the Original SPAC (or at the time of each contribution) whether there will be future contributions to SpinCos, and, if so, how much the original escrow will be reduced and how much will be left for the Original SPAC's business combination. The Commission believes such information would be important to investors in making informed investment decisions in the Original SPAC.

[41] *See* Notice, *supra* note 3, at 36841–42.

[42] The proposal also does not include any timing limitations with respect to when a SPAC may engage in a contribution and spin-off. As such, it appears that a contribution and spin-off could occur very close to the end of the 36-month period within which the Original SPAC and any SpinCo SPAC has to complete its business combination. This raises investor protection issues since shareholders may not have enough time to review disclosures before a vote or redemption decision is required.

[43] In these situations, the SpinCo SPAC may be structured completely differently than was disclosed at the time of the investment in the Original SPAC. For example, nothing in the proposal prevents the SpinCo SPAC from having a different target industry or business than the Original SPAC, different compensation arrangements than the Original SPAC, or different terms than disclosed in the Original SPAC registration statement.

concerns. For example, proposed Nasdaq IM–5101–2(f)(i) would provide shareholders the right to redeem, ''through one or more corporate transactions,'' their pro rata portion of the SPAC's contribution to a SpinCo SPAC's deposit account. In addition, proposed Nasdaq IM–5101–2(f)(vi) provides that public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the deposit account ''through one or more opportunities.'' The proposal, however, does not set forth any specific requirements applicable to the redemption or conversion opportunities with respect to the contribution to a SpinCo SPAC or specify what would qualify as an acceptable corporate transaction for purposes of a redemption.[44] Moreover, the proposed rule states that a SPAC will be permitted to contribute a portion of the amount held in the deposit account to a deposit account of ''another entity'' in a spin-off ''or similar corporate transaction.'' However, the proposal does not specify whether there are any limitations on the types of entities that may receive the contribution, including whether such entities could include an already existing SPAC, or what would constitute a ''similar transaction.'' The Commission is concerned that the lack of clarity and vagueness in the proposed rule text may cause confusion amongst market participants regarding the scope of the proposal and what is required under the proposed rules.

In addition, the Exchange has proposed that the conditions described in proposed Nasdaq IM–5101–2(f) shall apply to successive spin-offs or similar corporate transactions, ''mutatis mutandis.'' The Exchange provides no specificity or detail as to what this means or what factors the Exchange would consider when determining how to apply the proposed rule to successive spin-offs or similar corporate transactions. As drafted, the rule text would appear to give the Exchange broad discretion to apply the proposed rule in a different manner with respect to successive spin-offs or transactions to different SPAC issuers. It is also difficult for the Commission to assess whether the proposal is consistent with Section 6(b)(5) of the Act if the Exchange could simply change how the rule applies to fit a particular transaction by invoking its discretion through the proposed ''mutatis mutandis'' language. The Commission believes this lack of transparency and objectivity in the proposed rule raises investor protection and unfair discrimination concerns under the Act because market participants may be confused about what is permitted under the rules and the Exchange may elect to apply its rules in an inconsistent and discriminatory manner.

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirements, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest, and not be designed to permit unfair discrimination.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [45] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[46] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[47]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [48] to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [49] of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[50] any request for an opportunity to make an oral presentation.[51]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 27, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 10, 2021. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[52] in addition to any other comments they may wish to submit about the proposed rule change.

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–NASDAQ–2021–054 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–NASDAQ–2021–054. 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

[44] The Exchange states that a redemption could occur, for example, through a partial cash tender offer for shares of the Original SPAC pursuant to Rule 13e-4 and Regulation 14E of the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original SPAC for the purpose of facilitating the redemption. *See* Notice, *supra* note 3, at 36842 n.4. On the other hand, Nasdaq IM–5101–2 currently includes very specific requirements relating to redemption rights of public shareholders with respect to a business combination. *See* Nasdaq IM–5101–2(d)-(e).

[45] 17 CFR 201.700(b)(3).

[46] *See id.*

[47] *See id.*

[48] 15 U.S.C. 78s(b)(2)(B).

[49] 15 U.S.C. 78f(b)(5).

[50] 17 CFR 240.19b–4.

[51] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[52] *See supra* note 3.

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–NASDAQ–2021–054 and should be submitted by October 27, 2021. Rebuttal comments should be submitted by November 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93232; File No. SR–NYSENAT–2021–19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 7.12

October 1, 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 September 30, 2021, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 7.12 to the close of business on March 18, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 7.12 to the close of business on March 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 7.12, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 7.12 (a)–(d)).[4] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[5] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 7.12 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9] The Exchange then filed to extend the pilot for an additional year to the close of business

[53] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NSX–2011–11) (Approval Order); and 68779 (January 31, 2013), 78 FR 8638 (February 6, 2013) (SR–NSX–2013–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of Rule 11.20A).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[9] *See* Securities Exchange Act Release No. 85572 (April 9, 2019), 84 FR 15257 (April 15, 2019) (SR–NYSENAT–2019–08).

on October 18, 2020,[10] and later, on October 18, 2021.[11]

The Exchange now proposes to amend Rule 7.12 to extend the pilot to the close of business on March 18, 2022. This filing does not propose any substantive or additional changes to Rule 7.12.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[12]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[13] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[14]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the New York Stock Exchange LLC's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the Exchange's affiliate, the New York Stock Exchange (''NYSE''), proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[15] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[16] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on March 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 7.12 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional five months would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they

[10] *See* Securities Exchange Act Release No. 87077 (September 24, 2019), 84 FR 51671 (September 30, 2019) (SR–NYSENAT–2019–21).

[11] *See* Securities Exchange Act Release No. 90133 (October 8, 2020), 85 FR 65121 (October 14, 2020) (SR–NYSENAT–2020–33).

[12] See *https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20–392_2.pdf*

[13] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

will promote fair and orderly markets and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Extending the pilot Rules' effectiveness to the close of business on March 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

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) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2021–19 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSENAT–2021–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2021–19 and should be submitted on or before October 27, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21864 Filed 10–5–21; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93222; File No. SR–NYSE–2021–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend the Requirements of Section 102.06 of the NYSE Listed Company Manual To Allow an Acquisition Company To Contribute a Portion of Its Trust Account to a New Acquisition Company and Spin-Off the New Acquisition Company to Its Shareholders

September 30, 2021.

On August 23, 2021, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange

Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Sections 102.06 and 802.01B of the NYSE Listed Company Manual to allow an acquisition company to contribute a portion of its trust account to a new acquisition company and spin-off the new acquisition company to its shareholders, and to make conforming changes to the continued listing criteria applicable to acquisition companies. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 23, 2021.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates December 7, 2021 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2021–42).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21772 Filed 10–5–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92839 (September 1, 2021), 86 FR 50408. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-42/srnyse202142.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93214; File Nos. SR–NYSE–2021–05, SR–NYSEAMER–2021–04, SR–NYSEArca–2021–07, SR–NYSECHX–2021–01, SR–NYSENAT–2021–01]

Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.; Order Disapproving Proposed Rule Changes, as Modified by Partial Amendment No. 1, To Amend Each Exchange's Fee Schedule To Add Two Partial Cabinet Bundles Available in Co-Location and Establish Associated Fees

September 30, 2021.

I. Introduction

On January 19, 2021, New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'') (each an ''Exchange,'' collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchanges' fee schedules related to co-location to add two Partial Cabinet Bundles available in co-location and establish associated fees. The proposed rule changes were published for comment in the **Federal Register** on February 5, 2021 or February 8, 2021, as applicable.[3] On March 18, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes.[5] On May 6, 2021, the Division of Trading and Markets (the ''Division''), acting on behalf of the Commission by delegated authority, issued an order instituting proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule changes (''Order Instituting Proceedings'') to determine whether to approve or disapprove the proposed rule changes.[7] The Commission received an initial comment letter from the Exchanges in response to the Order Instituting Proceedings.[8] On July 30, 2021, pursuant to Section 19(b)(2) of the Act,[9] the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule changes.[10] On September 14, 2021, each Exchange filed Partial Amendment No. 1, followed by a second comment letter.[11] This order disapproves the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 91034 (February 1, 2021), 86 FR 8443 (February 5, 2021) (SR–NYSE–2021–05); 91035 (February 1, 2021), 86 FR 8449 (February 5, 2021) (SR–NYSEAMER–2021–04); 91036 (February 1, 2021), 86 FR 8440 (February 5, 2021) (SR–NYSECHX–2021–01); and 91037 (February 1, 2021), 86 FR 8424 (February 5, 2021) (SR–NYSENAT–2021–01); 91044 (February 2, 2021), 86 FR 8662 (February 8, 2021) (SR–NYSEArca–2021–07) (each, a ''Notice''). For ease of reference, page citations are to the Notice for NYSE–2021–05.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release Nos. 91357 (March 18, 2021), 86 FR 15732 (March 24, 2021) (SR–NYSE–2021–05); 91358 (March 18, 2021), 86 FR 15732 (March 24, 2021) (SR–NYSEAMER–2021–04); 91360 (March 18, 2021), 86 FR 15764 (March 24, 2021) (SR–NYSEArca–2021–07); 91362 (March 18, 2021), 86 FR 15765 (March 24, 2021)(SR–NYSECHX–2021–01); and 91363 (March 18, 2021), 86 FR 15763 (March 24, 2021) (SR–NYSENAT–2021–01).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 91785 (May 6, 2021), 86 FR 26082 (May 12, 2021) (SR–NYSE–2021–05, NYSEAMER–2021–04, NYSEArca–2021–07, SR–NYSECHX–2021–01 SR–NYSENAT–2021–01).

[8] NYSE filed a comment letter on behalf of all of the Exchanges. *See,* letter dated July 6, 2021 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Vanessa Countryman, Secretary, Commission (''First NYSE Response''). All comments received by the Commission on the proposed rule changes are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-05/srnyse202105.htm; https://www.sec.gov/comments/sr-nyseamer-2021-04/srnyseamer202104.htm*; *https://www.sec.gov/comments/sr-nysearca-2021-07/srnysearca202107.htm*; *https://www.sec.gov/comments/sr-nysechx-2021-01/srnysechx202101.htm https://www.sec.gov/comments/sr-nysenat-2021-01/srnysenat202101.htm.*

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release Nos. 92532, 86 FR 42911 (August 5, 2021) (SR–NYSE–2021–05, SR–NYSENAT–2021–01, SR–NYSEAMER–2021–04, NYSECHX–2021–01); 92531, 86 FR 42956 (August 5, 2021) (SR–NYSEArca–2021–07).

[11] In Partial Amendment No. 1, the Exchanges propose that Users ordering a proposed Partial Cabinet Bundle Option E or F on or before December 31, 2022 (instead of December 31, 2021, as originally proposed) would receive a 50% reduction in the monthly recurring charge. *See* Partial Amendment No. 1 at 3–4. *See also,* letter dated September 15, 2021 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Vanessa Countryman, Secretary, Commission (''Second NYSE Response''). Partial Amendment No. 1 and the Second NYSE Response are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-05/srnyse202105.htm; https://www.sec.gov/comments/sr-nyseamer-2021-04/srnyseamer202104.htm*; *https://www.sec.gov/comments/sr-nysearca-2021-07/srnysearca202107.htm*; *https://www.sec.gov/comments/sr-nysechx-2021-01/*

proposed rule changes, as modified by Partial Amendment No. 1.

II. Background and Description of the Proposed Rule Changes, as Modified by Partial Amendment No. 1.

The Exchanges offer ''co-location services'' to market participants from a data center in Mahwah, New Jersey (''Mahwah Data Center'') where their electronic trading and execution systems are located.[12] These Exchange-offered services provide market participants (co-location ''Users,'' as further described below) with a variety of options to obtain cabinet space, power, bandwidth, and related services that enable them to connect to the Exchanges from within the Mahwah Data Center and thereby obtain the most efficient access to the Exchanges' trading engines and market data.[13] As the Exchanges have stated, ''[u]sers that receive co-location services normally would expect reduced latencies in sending orders to the Exchange and receiving market data from the Exchange.'' [14]

A market participant that seeks the benefits of co-location generally will, at a minimum, purchase cabinet space, power, and bandwidth connections (1 Gb, 10 Gb, or 40 Gb), and any necessary cross-connections. The 1 Gb, 10 Gb, and 40 Gb bandwidth connections that the Exchanges offer enable the transmission of data over local area networks in the Mahwah Data Center. These local area networks include the internet Protocol (''IP'') network and the Liquidity Center Network (''LCN''). Both the IP and LCN networks provide access to the Exchanges' trading and execution systems and to the Exchanges' proprietary market data products, with the LCN network having lower latency than the IP network.[15] The IP network provides access to ''away'' (third-party) market data products and execution systems.[16] In 2020, the Exchanges added the NMS Network, a dedicated network in the Mahwah Data Center, providing co-location Users with 10 Gb and 40 Gb connections access to this additional network without an associated fee change.[17]

The Exchanges refer to direct purchasers of their co-location services as ''Users,'' and permit any market participant that requests to receive co-location services directly from one or more of the Exchanges to be a User, subject to potential inventory constraints.[18] The Exchanges' also permit ''Hosting Users.'' A Hosting User is a User that subleases its cabinet space to a ''Hosted Customer'' and thereby resells or repackages and sells Exchange co-location services to customers of its own.[19] Hosting Users are subject to a Hosting Fee of $1,000 per month per Hosted Customer for each cabinet in which such Hosted Customer is hosted.[20] Thereby, the Exchanges receive payment from Hosting Users for co-location services they purchase from the Exchanges, as well as for cabinet space that a Hosting User resells, with the Hosting Fee determined on a per cabinet/per Hosted Customer basis.

Among the co-location services currently offered by the Exchanges are ''Partial Cabinet Bundles.'' [21] Designed for ''smaller Users'' having limited power or cabinet space demands, the current bundles offer a small co-location package: A partial cabinet with network access via 1 Gb or 10 Gb connections, two fiber cross connections, and connectivity to a time feed protocol, discounted from what the price would be if a User purchased the elements separately.[22] Users currently may choose from four Partial Cabinet Bundles, labeled Options A, B, C, and D. Options A and B include a partial cabinet with either one or two kilowatts (''kW'') of power; a 1 Gb connection to each of the LCN network and the IP network; two fiber cross connections; and connectivity to either the Network Time Protocol or the Precision Timing Protocol time feeds.[23] Options C and D

srnysechx202101.htm https://www.sec.gov/comments/sr-nysenat-2021-01/srnysenat202101.htm. For ease of reference, citations to Partial Amendment No. 1 and the Second NYSE Response are to those for SR–NYSE–2021–05.

[12] *See e.g.,* Securities Exchange Act Release Nos. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56); 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80); 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (approving co-location services and fees for NYSE, NYSE American, and NYSE Arca); 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07); 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12) (approving co-location services and fees for NYSE National and NYSE Chicago). The Commission has consistently reviewed proposed rule changes for co-location services at the Mahwah Data Center, which are facilities of the Exchanges.

[13] *See id.* These services are for fees filed with the Commission, and reflected on an Exchange's Price List. A User that incurs co-location fees for a particular co-location service pursuant to any Exchange's Price List is not subject to co-location fees for the same co-location service charged by one of the affiliated Exchanges. *See e.g.,* Notice, 86 FR at 8444 n.5.

[14] *See supra* note 12. *See also* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, at 3610 (January 21, 2010) (Concept Release on Equity Market Structure), in which the Commission described co-location as ''a service offered by trading centers that operate their own data centers and by third parties that host the matching engines of trading centers. The trading center or third party rents rack space to market participants that enables them to place their servers in close physical proximity to a trading center's matching engine. Co-location helps minimize network and other types of latencies between the matching engine of trading centers and the servers of market participants.''

[15] *See e.g.,* Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888, 7889 (February 12, 2015).

[16] *Id.*

[17] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Exchanges' Co-Location Services to Offer Co-Location Users Access to the NMS Network; 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (SR–NYSECHX–2020–18)(Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Services Available to Users That Use Co-location Services in the Mahwah, New Jersey Data Center). More specifically, the NMS Network offers dedicated access to the National Market System Plan data feeds (''NMS feeds'') for which the Securities Industry Automation Corporation (''SIAC,'' a wholly-owned subsidiary of the NYSE) is engaged as the securities information processor, namely, the consolidated market data feeds distributed by (1) the Consolidated Trade Association Plan; (2) the Consolidated Quotation Plan; and (3) the Options Price Reporting Authority Plan). As a result, access to the NMS feeds became available via dedicated bandwidth and at lower latency than they had been over the IP network. *Id.*

[18] *See e.g.,* Securities Exchange Act Release No. 65973 (December 15, 2011), 76 FR 79232 (December 21, 201) (SR–NYSE–2011–53) (expanding access to co-location to any market participant that requests to receive co-location services directly from one or more of the Exchanges, and designating such persons as ''Users''); Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSENAT–2021–03, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02) (establishing rules for the allocation of cabinets and power to Users should inventory be insufficient to satisfy demand).

[19] A ''Hosting User'' means a User of co-location services that hosts a Hosted Customer in the User's co-location space. A ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space. *See e.g.,* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

[20] *Id.*

[21] *See e.g.,* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

[22] *Id.* at 7395–96. Partial Cabinet Bundle purchases are subject to eligibility conditions: A purchaser (together with its affiliates) of a Partial Cabinet Bundle from the Exchanges may have no more than one Partial Cabinet Bundle and is limited to a total footprint of 2 kW of power. *See id.* and Notice, 86 FR at 8444. Designed to limit purchases of Exchange-offered Partial Cabinet Bundles to ''smaller Users,'' this condition applies even if the purchaser is also a ''Hosted Customer.'' *See* Securities Exchange Act Release No. 76612 (December 10, 2015), 80 FR 78269, at 78271 (December 16, 2015) (SR–NYSE–2015–53).

[23] *See* Notice, 86 FR at 8444. Cross connections are fiber connections at the Mahwah Data Center that provide the means to connect a User's multiple cabinets, a cabinet of one User to a cabinet of another User, or a User's cabinet to Exchange or third-party equipment. *See e.g.,* Securities Exchange Act Release No. 74222 (February 6, 2015, 80 FR

Continued

originally included a 10 Gb connection to the LCN Network and a 10 GB connection to the IP network.[24] When the NMS Network was added, the Exchanges upgraded Options C and D, to further include, at no additional cost, two 10 Gb connections to the NMS Network.[25] Options C and D are available for an initial charge of $10,000 and a recurring monthly charge of $14,000 and $15,000, respectively.[26]

The Exchanges now propose to expand their co-location services to add two new Partial Cabinet Bundles, designated as Options E and F, and establish associated fees. Proposed Options E and F would offer a 40 Gb connection to the LCN network and a 40 Gb connection to the IP network, and two 40 Gb connections to the NMS Network.[27] Otherwise, proposed Options E and F would be the same as the Options C and D bundles, offering a 1 kW (Option E) or 2 kW (Option F) partial cabinet, two fiber cross connections, and either the Network Time Protocol Feed or the Precision Timing Protocol.[28] The Exchanges state that the proposed new options are in response to customer interest[29] and that the option of a Partial Cabinet Bundle that includes 40 Gb connections would enable small market participants to connect to more data feeds or have the same size connection in co-location that they have elsewhere.[30] The Exchanges propose to offer each new bundle for an initial charge of $10,000, and, following an initial promotional period, a monthly charge of $18,000 for Option E, and $19,000 for Option F.[31]

7888 (February 12, 2015) (SR–NYSE–2015–05). The Network Time Protocol or the Precision Timing Protocol are options for time feeds that provide the current time of day, and which allow Users to receive time and synchronize clocks throughout a computer network, and can also be used for recordkeeping or measuring response times. *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

[24] *Id.*

[25] *See supra* note 17 and accompanying text.

[26] *See* Notice, 86 FR at 8445.

[27] *See* Notice, 86 FR at 8444.

[28] *See* Notice, 86 FR at 8444. Purchases of the proposed new bundles would likewise be subject to the same eligibility requirements summarized in note 22 *supra.*

[29] *See id.*

[30] *See id.* at 8445.

[31] As proposed in Partial Amendment No. 1, Users who order before December 31, 2022 would be charged $9,000 per month for Option E or $9,500 per month for Option F for the first 12 months of service. The Exchanges state that given the passage of time, extending this date beyond December 31, 2021, as originally proposed, would provide Users with the benefit of a longer period in which to order the proposed Partial Cabinet Bundles E and F with a reduced monthly rate, giving them more time to evaluate the benefits of these bundles as compared to bundles offered by various Hosting Users. *See* Partial Amendment No. 1 at 3–4.

III. Discussion and Commission Findings

Under Section 19(b)(2)(C) of the Act,[32] the Commission shall approve a proposed rule change of a self-regulatory organization (''SRO'') if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to such organization.[33] The Commission shall disapprove a proposed rule change if it does not make such a finding.[34] Rule 700(b)(3) of the Commission's Rules of Practice states that the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.'' [35] Rule 700(b)(3) also states that ''the description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.'' [36] Both the D.C. Circuit and the Commission have addressed the application of these and analogous standards, and the decision to disapprove the proposed rule changes is best understood in the context of that precedent.

A. The Relevant Precedent

1. The NetCoalition Litigation

In 2010, the D.C. Circuit vacated the Commission's approval of a fee rule filed by NYSE Arca.[37] The court held that focusing on whether competitive market forces constrained the exchange's pricing decisions was an acceptable basis for assessing the fairness and reasonableness of the fees, but determined that the record did not factually support the conclusion that significant competitive forces limited NYSE Arca's ability to set unfair or unreasonable prices. Although the D.C. Circuit vacated and remanded for further proceedings, it accepted the Commission's articulated ''market-based approach'' for assessing fees.[38]

Under the market-based approach, the Commission considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . ., including the level of any fees.'' [39] If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless ''there is a substantial countervailing basis to find that the terms'' of the rule violate the Act or the rules thereunder.[40] If an exchange cannot demonstrate that it was subject to significant competitive forces, it must ''provide a substantial basis, other than competitive forces . . . demonstrating that the terms of the [fee] proposal are equitable, fair, reasonable, and not unreasonably discriminatory.'' [41]

Subsequently, NYSE Arca filed with the Commission a new rule that imposed the same fees that had been vacated by the D.C. Circuit, but that designated the filing as effective immediately pursuant to a change in the law made by the Dodd-Frank Act.[42] The Securities Industry and Financial Markets Association (''SIFMA'') filed a challenge with the Commission to NYSE Arca's 2010 fee rule under Section 19(d) of the Act on the ground that the fee rule was an improper limitation of access to exchange services. The Commission consolidated that challenge with another challenge to a fee rule filed by The Nasdaq Stock Market LLC.[43]

On October 16, 2018, the Commission issued its decision in the consolidated proceeding.[44] The Commission held that the exchanges had failed to meet their burden of establishing that certain challenged fees were consistent with the purposes of the Act. Specifically, the Commission concluded that the exchanges had not established that competitive forces constrained their pricing decisions with respect to the fees at issue and that the fees were fair and reasonable and not unreasonably discriminatory. In so finding, the

[32] 15 U.S.C. 78s(b)(2)(C).

[33] 15 U.S.C. 78s(b)(2)(C)(i).

[34] 15 U.S.C. 78s(b)(2)(C)(ii). *See also* 17 CFR 201.700(b)(3).

[35] 17 CFR 201.700(b)(3).

[36] *Id.*

[37] *See NetCoalition* v. *SEC,* 615 F.3d 525, 534–35, 539–44 (D.C. Cir. 2010) (''*NetCoalition I*'').

[38] *Id.*

[39] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (2008 ArcaBook Approval Order).

[40] *Id.*

[41] *Id.*

[42] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (July 21, 2010). *See also* 15 U.S.C. 78s(b)(3)(A) (permitting SROs to designate as immediately effective rule changes ''establishing or changing a due, fee, or other charge imposed by the [SRO] on any person, whether or not the person is a member of the [SRO]'').

[43] *See* In the Matter of the Application of SIFMA, Securities Exchange Act Release No. 72182, (May 16, 2014), *available at: https://www.sec.gov/litigation/opinions/2014/34-72182.pdf.*

[44] *See* In the Matter of the Application of SIFMA, Securities Exchange Act Release No. 84432 (October 16, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-84432.pdf* (''SIFMA Decision''), *vacated on other grounds, NASDAQ Stock Mkt., LLC* v. *SEC,* 961 F.3d 421 (D.C. Cir. 2020). *See* text accompanying note 46 *infra.*

Commission stated specifically that it was not making a determination that the fees themselves were not fair and reasonable. The Commission also explained that it was possible the challenged fees could be shown to be consistent with the Act, but that the evidence provided by the exchanges failed to satisfy their burden on the existing record. Accordingly, the Commission set those fees aside.[45] After an appeal by the affected exchanges, the D.C. Circuit issued its opinion, holding that Section 19(d) of the Act is not available as a means to challenge the reasonableness of generally-applicable fee rules, vacated the Commission's decision, and remanded for proceedings consistent with the court's opinion.[46]

2. Susquehanna

In August 2017, the D.C. Circuit issued its decision in *Susquehanna International Group* v. *SEC.*[47] There, the court held that the Commission's order approving a proposed rule change filed by the Options Clearing Corporation (''OCC'')—its ''Capital Plan''—did not provide the reasoned analysis required under the Act and the Administrative Procedure Act.[48] The court found that the Commission's analysis was flawed in that the Commission relied too heavily on OCC's representations rather than performing an independent analysis of the Capital Plan or critically evaluating OCC's analysis of the Plan.[49] The court emphasized that the Commission's ''unquestioning reliance on OCC's defense of its own actions is not enough to justify approving the Plan''; rather, the Commission ''should have critically reviewed OCC's analysis or performed its own.'' [50] Nor, according to the court, could the Commission reach a conclusion ''unsupported by substantial evidence.'' [51] The D.C. Circuit remanded the case to the Commission for further proceedings.

Following the remand, the Commission disapproved the OCC Capital Plan because it determined that the information OCC submitted before the Commission was insufficient to support a finding that the plan was consistent with the Act.[52] In reaching this determination, the Commission reiterated the D.C. Circuit's holding that it must ''critically evaluate the representations made and the conclusions drawn'' by the SRO in determining whether a proposed rule change is consistent with the Act.[53]

B. The Proposed Rule Change at Issue Here

As discussed above, the Commission applies a market-based approach to assessing proprietary market data fees, which has also been applied to connectivity fees.[54] Under the market-based approach, the Commission considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . ., including the level of any fees.'' [55] If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless ''there is a substantial countervailing basis to find that the terms'' of the rule violate the Act or the rules thereunder.[56] If an exchange cannot demonstrate that it was subject to significant competitive forces, it must ''provide a substantial basis, other than competitive forces . . . demonstrating that the terms of the [fee] proposal are equitable, fair, reasonable, and not unreasonably discriminatory.'' [57]

In support of the proposals, the Exchanges argue principally that the proposed Partial Cabinet Bundles and fees therefor are subject to significant competitive forces because they are offered in a competitive environment where substitutes are available.[58] Specifically, the proposal states that the Exchanges ''operate in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations.[59] In the First NYSE Response, the Exchanges further state that Hosting Users can and do offer a competing substitutable product.[60] In the Second NYSE Response, the Exchanges add that, currently, 89 percent of customers receiving bundled services via the Mahwah Data Center receive them from Hosting Users, while only 11 percent purchase them from the Exchanges as one of the existing Partial Cabinet Bundle Options A–D.[61] They state further that ''the fact that the vast majority of customers obtain their bundles from Hosting Users shows that the Exchanges are subject to significant competitive forces in the market for bundled services.'' [62]

In addition, the Exchanges state that it is reasonable to set monthly charges of $18,000 for an Option E bundle (a $4,000 increase over Option C) and $19,000 for an Option F bundle (a $4,000 increase over Option D), ''which reflects the fact that the Exchange will have to supply multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D.'' [63] They also urge that disapproval of the proposal would be unfair and would harm competition. The Commission's discussion below begins with the Exchanges' competition argument based on substitutability, and then turns to consideration of the Exchanges' other arguments.

After careful consideration, the Commission is disapproving the proposed rule changes, as modified by Partial Amendment No. 1, because the information before us is insufficient to support a finding that the proposed rule changes are consistent with the requirements of the Act. Specifically, the Commission is unable to find that the proposed rule changes are consistent with: (1) Section 6(b)(4) of the Act,[64] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities; (2) Section 6(b)(5) of the Act,[65] which requires that the rules

[45] *See id.* at 17–54. During the pendency of this Section 19(d) challenge, over 60 related challenges to exchange rule changes and NMS plan amendments were filed with the Commission. Contemporaneously with the Commission's October 16, 2018 decision, the Commission issued a separate order remanding those related challenges to the respective exchanges and NMS plan participants and instructed the exchanges and plan participants to consider the impact of the October 16, 2018 decision on the challengers' assertions that the contested rule changes and plan amendments should be set aside under Section 19(d) of the Act. *See* In the Matter of the Applications of SIFMA and Bloomberg L.P., Securities Exchange Act Release No. 84433 (October 16, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-84433.pdf.* The Commission further directed the exchanges and NMS plan participants to develop or identify fair procedures for assessing the challenged rule changes and NMS plan amendments as potential denials or limitations of access to services. *See id.*

[46] *See NASDAQ Stock Mkt., LLC* v. *SEC,* 961 F.3d 421 (D.C. Cir. 2020).

[47] 866 F.3d 442 (D.C. Cir. 2017).

[48] *See id.* at 447 (citing *NetCoalition I*).

[49] *See id.*

[50] *Id.*

[51] *Id.* at 447–48.

[52] *See* Securities Exchange Act Release No. 85121 (February 13, 2019), 84 FR 5157 (February 20, 2019) (SR–OCC–2015–02).

[53] *Id.* at 5157.

[54] *See* Section III.A.1, *supra.*

[55] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (2008 ArcaBook Approval Order). *See also NetCoalition I, supra* note 37 at 535, and SIFMA Decision, *supra* note 44 at 22.

[56] *Id.*

[57] *Id.*

[58] *See infra* Section II.B.2.

[59] *See* Notice, 86 FR at 8445.

[60] *See* First NYSE Response at 7–8.

[61] *See* Second NYSE Response at 1.

[62] *See* Second NYSE Response at 1.

[63] *See* Notice, 86 FR at 8445.

[64] 15 U.S.C. 78f(b)(4).

[65] 15 U.S.C. 78f(b)(5).

of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and (3) Section 6(b)(8) of the Act,[66] which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Because an inability to make any of these determinations under the Act independently necessitates disapproving the proposal, the Commission disapproves the proposed rule changes.[67]

1. The Exchanges' Competition-Based Argument in Support of the Proposed Fee Rules Lacks Sufficient Information for the Commission To Determine Whether the Proposed Rule Changes Are Consistent With the Act

In their proposals, the Exchanges state that they operate ''in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations.'' [68] In the First NYSE Response, they state that competition is demonstrated because substitutes for the proposed services are readily available from third-party providers, and specifically from the Exchanges' Hosting Users.[69] They also state that Partial Cabinet Bundle Options E and F are proposed in response to customer interest and for the purpose of competing with bundled services offered by Hosting Users.[70] The Exchanges further state that Hosting Users are third parties that pay a monthly fee to the Exchanges in exchange for permission to subdivide cabinets and resell those partial cabinets, along with other services, and, in this way, Hosting Users are third parties that offer services in direct competition with the Exchanges.[71] As noted above, the Exchanges state that competition is demonstrated by the fact that 89% of customers obtain their bundle services from alternate providers despite the availability of Partial Cabinet Bundle Options A–D from the Exchanges.[72]

The Exchanges have not provided sufficient information to demonstrate that the market for the proposed Partial Cabinet Bundles is competitive. As an initial matter, the Exchanges' broad rationale that fees for proposed Partial Cabinet Bundle Options E and F are, like fees for all co-location services, constrained by competition, is not supported with data and analysis. They state that ''fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants,'' and that ''if a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange [and pursue alternative strategies].'' [73] However, they offer no evidence that substitutes for Partial Cabinet Bundle Options E and F may be available from other exchanges or vendors outside of the Mahwah Data Center. Instead, the Exchanges argue that substitutable services are available from Hosting Users.[74]

Based on the information provided, it appears that the market for the proposed Partial Cabinet Bundles could be accessed in two ways: Directly from the Exchanges, or from Hosting Users offering a similar product.[75] But it remains unclear how the presence of Hosting Users brings significant competitive forces to bear on Exchange pricing of the proposed products, if, as it appears, Hosting User access to the key services comprising the proposed Partial Cabinet Bundles is controlled by the Exchanges and the ability of a Hosting User to resell cabinet space and thereby obtain Hosted Customer business is contingent on payment of $1,000 per Hosted Customer for each cabinet in which such Hosted Customer is hosted.

The Exchanges argue that they compete with their Hosting Users, and that the proposal is an attempt to ''to maintain a more level playing field between the Exchanges and the Hosting Users, who compete for Hosted Customer business.'' [76] They also urge that Hosting Users have freedom in the relevant market that the Exchanges lack, stating: ''Hosting Users are free to create a wide array of bespoke bundles of services for specific customers, charging whatever fees those customers will pay, without having to file such services with the Commission. Because Hosting Users are not required to pre-clear such bundles with the Commission, they have unfettered freedom to compete *with each other* in the market for partial cabinet bundled services.'' [77] The Exchanges state that there are currently five Hosting Users available to offer similar substitutes, with at least one currently believed to have a customer.[78] Further, the Exchanges state that they do not expect the availability of proposed Options E and F to cause customers that currently obtain bundled services from Hosting Users to migrate their business to the Exchanges, because the freedoms that Hosting Users have put Hosting Users in a superior competitive position relative to the Exchanges in the provision of bundled services.[79]

These arguments are not sufficient to demonstrate the presence of a competitive market for the proposed Partial Cabinet Bundles. In order for it to offer the substitute services that the Exchanges claim will bring competitive forces to bear on fees, a Hosting User must accept the Exchanges' operational environment, purchase the key services comprising the Partial Cabinet Bundles (*e.g.,* cabinet space, power, bandwidth connections) from the Exchanges, and bear the applicable Hosting Fees. In this environment,[80] the Exchanges impose charges that represent a portion of the costs of their competitors, the Hosting Users. While offering Options E and F may expand the range of co-location offerings available, the extent to which these offerings will result in Hosting Users being able to offer similar services

[66] 15 U.S.C. 78f(b)(8).

[67] In disapproving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f), and text accompanying notes 92–94 *infra*.

[68] *See* Notice, 86 FR at 8445.

[69] *See* First NYSE Response at 7.

[70] *See* First NYSE Response at 7–8 (stating, ''approximately 10% of Users in colocation are Hosting Users capable of selling such bundles to customers,'' and ''the Exchanges believe that at least one of the Hosting Users currently does offer a Hosting User Bundle that includes 40 Gb connections.'').

[71] *See id*. at 7.

[72] *See* Second NYSE Response at 2.

[73] *See* Notice, 86 FR at 8446.

[74] *See* First NYSE Response at 9–11.

[75] In the First NYSE Response, the Exchanges state that acquiring a partial cabinet from Hosting Users is not the only way that a customer could acquire the services contained in the proposal. They state that customers could buy a partial cabinet from the Exchanges without any network connectivity, then cross-connect to a Hosting User for access to network connections. *See* First NYSE Response at 8. Such partial cabinet and network connectivity would have to be purchased from the Exchanges, however, as would the cross connects.

[76] *See* Notice, 86 FR at 8446.

[77] *See* First NYSE Response at 7 (italics added).

[78] *See* note 70 *supra*.

[79] *See* Second NYSE Response at 2.

[80] As noted above, the physical environment is in space proximate to the Exchanges' trading engines and market data systems, over which the Exchanges have control.

concomitantly with the Exchanges at a competitive price is unclear. The evidence regarding Options A–D provided in the Second NYSE Response is not evidence regarding Options E–F, and so does not provide support for the Exchanges' competition arguments. The Exchanges do not explain how Hosting Users may compete with the Exchanges when access to the services comprising the proposed Partial Cabinet Bundles is controlled by the Exchanges. Neither do they explain how the presence of Hosting Users is a force that constrains the Exchanges' pricing decisions.[81] Further, it remains unclear how the proposals would result in a more level playing field between the Exchanges and Hosting Users, which the Exchanges state is their goal. Because the Exchanges have not provided sufficient evidence to establish that competitive forces constrain their ability to price the proposed Partial Cabinet Bundles, they must provide an alternative basis to support the proposed fees.[82]

2. The Exchanges' Other Arguments Lack Sufficient Information for the Commission To Determine Whether the Proposed Rule Changes Are Consistent With the Act

Under the market-based approach, if an exchange cannot demonstrate that it was subject to significant competitive forces, it must ''provide a substantial basis, other than competitive forces, . . . demonstrating that the terms of the proposal are equitable, fair, reasonable, and not unreasonably discriminatory.'' [83] The Exchanges have not done so on the record here.

In support of the fee levels proposed for Partial Cabinet Bundle Options E and F, the Exchanges state that the $10,000 initial charge is reasonable because it is the same as that which Users currently pay when choosing the existing Option C or D bundles, which reflects the fact that setting up each of these four cabinet options involves a similar amount of work for the Exchanges.[84] They also state that the proposed monthly charges of $18,000 for an Option E bundle (a $4,000 increase over Option C) and $19,000 for an Option F bundle (a $4,000 increase over Option D) are reasonable because these fees reflect the fact that the Exchanges will have to supply more expensive multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D bundles.[85] However, although these arguments appear generally to be based on the costs incurred by the Exchanges in providing the proposed Partial Cabinet Bundles, the Exchanges provide no specific cost information to support their arguments. In making any finding or determination, the Commission cannot ''[s]imply accept what the [SRO] has done,'' and cannot have an ''unquestioning reliance'' on an SRO's representations in a proposed rule change.[86] Without more, these statements do little to inform the analysis into the level of the particular fees proposed here.

The Exchanges also assert that the Commission may be applying improper standards to the rule filings.[87] Specifically, the First NYSE Response expresses the concern that the Commission may be improperly demanding that the Exchanges provide cost data in connection with all rule filings, even where the Exchanges have demonstrated that sufficient competition exists.[88] The Exchanges are incorrect. As described above, the Commission takes a market-based approach to assessing proprietary market data fees, which has also been applied to connectivity fees. The Commission considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . ., including the level of any fees.'' [89] If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless ''there is a substantial countervailing basis to find that the terms'' of the rule violate the Act or the rules thereunder.[90] If an exchange cannot demonstrate that it was subject to significant competitive forces, it must ''provide a substantial basis, other than competitive forces . . . demonstrating that the terms of the [fee] proposal are equitable, fair, reasonable, and not unreasonably discriminatory.'' [91]

Finally, the Exchanges argue that disapproval of the proposals would be harmful to competition.[92] The Exchanges indicate that their inability to offer Partial Cabinet Bundles with 40 Gb connections hinders competition with Hosting Users, and may deny more cost effective alternatives for Users with minimal power or cabinet space demands, but higher bandwidth requirements.[93] The Commission encourages the Exchanges to propose rule changes that enhance competition, and the Exchanges are free to refile these fees and accompany them with an updated explanation demonstrating that their proposals are consistent with the Act.[94] For the reasons discussed above, they have not met this burden on the current record.

IV. Conclusion

For the reasons set forth above, the Commission does not find that the proposed rule changes, as modified by Partial Amendment No. 1, are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Sections 6(b)(4), 6(b)(5), and 6(b)(8) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[95] that the proposed rule changes (SR–NYSE–2021–05, SR–NYSEAMER–2021–04, SR–NYSEArca–2021–07, SR–NYSECHX–2021–01, SR–NYSENAT–2021–01), each as modified by Partial Amendment No 1, be, and hereby are, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[96]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–21752 Filed 10–5–21; 8:45 am]

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[81] *See, e.g., NetCoalition I* at 542 (''the existence of a substitute does not necessarily preclude market power. . . . Rather, whether a market is competitive notwithstanding potential alternatives depends on factors such as the number of buyers who consider other products interchangeable and at what prices. . . . The inquiry into whether a market for a product is competitive, therefore, focuses on the customer and, in particular, his price sensitivity—in economic terms, the product's 'elasticity of demand.'''); and *id.* at 544 (quoting *United States* v. *Microsoft Corp.,* 253 F.3d 34, 53–54 (DCCir.2001) (''The test of reasonable interchangeability . . . consider[s] only substitutes that constrain pricing in the reasonably foreseeable future, and only products that can enter the market in a relatively short time can perform this function.'').

[82] *See supra* note 57 and accompanying text.

[83] *See id.*

[84] *See* Notice, 86 FR at 8445.

[85] *Id.*

[86] *See Susquehanna supra* note 47, 866 F.3d 442 (D.C. Cir. 2017).

[87] *See* First NYSE Response at 4–7.

[88] *See id.*

[89] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (2008 ArcaBook Approval Order). *See also NetCoalition I, supra* note 37 at 535, and SIFMA Decision, *supra* note 44 at 22.

[90] *Id.*

[91] *Id.*

[92] *See* First NYSE Response at 9–10.

[93] *See id.* at 9.

[94] *See supra* 67.

[95] 15 U.S.C. 78s(b)(2).

[96] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11556]

Notice of Public Meeting of the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act, the U.S. Department of State announces that the PEPFAR Scientific Advisory Board (SAB) will be holding a virtual meeting of the full board. The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is required for both public participation and comment.

DATES: The meeting will be held virtually on Tuesday, November 2, 2021, from approximately 10:00 a.m. to 2:00 p.m. (ET) and on Wednesday, November 3, 2021, from approximately 10:00 a.m. to 2:00 p.m. (ET) utilizing an online technology platform. Requests to attend the meeting must be received no later than October 25, 2021. Requests for reasonable accommodations or to provide public comment must be received no later than October 25, 2021.

ADDRESSES: The meeting will be held virtually via an online platform. Individuals are asked to pre-register at PEPFARSAB. The agenda be sent to all registrants and will also be posted on the PEPFAR SAB web page at *www.state.gov/scientific-advisory-board-pepfar* one week in advance of the meeting, along with instructions on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Klucking, Designated Federal Officer for the SAB, Office of the U.S. Global AIDS Coordinator and Health Diplomacy at *KluckingSR@state.gov* or (202) 615–4350.

SUPPLEMENTARY INFORMATION:

Background: The SAB is established under the general authority of the Secretary of State and the Department of State (''the Department'') as set forth in 22 U.S.C. 2656, and consistent with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix). The SAB serves the U.S. Global AIDS Coordinator solely in an advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS.

Agenda: SAB members will be discussing the COVID–19 pandemic and its impact on people living with or at risk of HIV infection; PEPFAR 2020 and 2021 strategies, plans, programs and performance; PEPFAR 2022 strategic updates and Minimum Program Requirements; and PEPFAR technical updates for 2022 including:

- Use of HIV self-testing to monitor HIV seroconversion in persons taking pre-exposure prophylaxis (PrEP);
- implementation of HPV DNA testing as a primary screening method for cervical cancer;
- new monitoring, evaluation and reporting (MER) indicators;
- use of point of care diagnostics and multiplex use of lab instruments;
- updates on mortality-healthy living with HIV;
- addressing key gaps (AGYW, key populations, children).

Registered members of the public will be permitted to participate in a comment period at the end of the meeting in accordance with the Chair's instructions.

Public Participation: Members of the public who wish to participate are asked to register directly at the link listed in the **ADDRESSES** section or by sending an email to Ms. Crystal Solomon at *SolomonCD@state.gov* not later than October 25, 2021. Individuals are required to provide their name, email address, and organization. At registration, individuals are also asked to indicate any request for reasonable accommodation and/or a request to provide public comment. Time for public comment may be limited. Requests made after October 25, 2021, will be considered but might not be able to be fulfilled.

Sara Klucking,

Director, Office of Research and Science, Office of the U.S. Global AIDS Coordinator and Health Diplomacy, Office of the Secretary of State.

[FR Doc. 2021–21799 Filed 10–5–21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36500]

Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc.—Control—Kansas City Southern; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 8 in Docket No. FD 36500; Notice of Receipt of Amended Prefiling Notification.

SUMMARY: Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company (CPRC), and their U.S. rail carrier subsidiaries, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) (CP and KCS collectively, Applicants) have filed an amendment to the prefiling notice of intent that was filed with the Board on March 23, 2021 (March 2021 Notice).

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board's website. In addition, one copy of each filing must be sent (and may be sent by email only, if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CP's representative, David L. Meyer, Law Office of David L. Meyer, 1105 S Street NW, Washington, DC 20009; (4) KCS's representative, William A. Mullins, Baker & Miller PLLC, Suite 300, 2401 Pennsylvania Avenue NW, Washington, DC 20037; (5) any other person designated as a Party of Record on the service list; and (6) the administrative law judge assigned in this proceeding, the Hon. Thomas McCarthy, 1331 Pennsylvania Avenue, NW, Washington, DC 20004–1710, and at *ctolbert@fmshrc and zbyers@fmshrc*.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0283. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By decision served April 21, 2021, the Board provided notice of Applicants' intent to file an application seeking authority for the acquisition of control by Canadian Pacific of Kansas City Southern, and through it, of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates. *See Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 3*), FD 36500 (STB served Apr. 21, 2021). Specifically, in the March 2021 Notice, Applicants stated that Canadian Pacific (along with two of its wholly owned subsidiaries,

Cygnus Merger Sub 1 Corporation and Cygnus Merger Sub 2 Corporation) and Kansas City Southern had entered into an Agreement and Plan of Merger (March 2021 Merger Agreement), under which Canadian Pacific, through its indirect, wholly owned subsidiary, Cygnus Merger Sub 2 Corporation, would acquire all of the capital stock of Kansas City Southern.[1]

By decision served April 23, 2021, following a public comment period, the Board found the proposed transaction to be subject to the regulations set forth at 49 CFR part 1180, subpart A, in effect before July 11, 2001, pursuant to the waiver for a merger transaction involving KCS and another Class I railroad under 49 CFR 1180.0(b). *See Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 4*), FD 36500, slip op. at 2–3 (STB served Apr. 23, 2021) (with Vice Chairman Primus dissenting). By decision served May 6, 2021, the Board found that, subject to certain required modifications described in that decision, Applicants' proposed placement of KCS into a voting trust during the pendency of the control proceeding would comply with the guidelines at 49 CFR part 1013, comport with past agency policy and practice, and ensure that the day-to-day management and operation of KCS would not be controlled by Canadian Pacific or anyone affiliated with Canadian Pacific while KCS remains in trust. *See Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 5*), FD 36500, slip op. at 6 (STB served May 6, 2021).

On May 21, 2021, KCS notified the Board that it had terminated the March 2021 Merger Agreement with Canadian Pacific and had entered into a merger agreement with Canadian National Railway Company (CNR). (KCS Letter 1, May 21, 2021.) KCS stated that, accordingly, it was withdrawing as a co-applicant in this proceeding. (*Id.* at 2.)

In the amended notice, filed on September 15, 2021, Applicants state that KCS rejoins CP as a co-applicant in this proceeding, as KCS has since terminated its agreement to be acquired by CNR. (Amended Notice 2.) Applicants state that they have executed a definitive Agreement and Plan of Merger (September 2021 Merger Agreement), which ''contemplates the same transaction on terms identical in nearly every respect to those set forth'' in the March 2021 Merger Agreement, including Applicants' planned use of an independent voting trust.[2] (*Id.* at 2–3.) Specifically, Applicants state the structure of the proposed transaction is identical to that described in the March 2021 Notice. (*See id.* at 4–5; March 2021 Notice 2–3.)

Applicants indicate that they anticipate filing their application on or shortly after October 20, 2021, and that the other specifics in the March 2021 Notice remain the same, including the use of 2019 as the base year for impact analyses. (Amended Notice 3.)

Use of a Voting Trust. As noted above, the structure of the proposed transaction as described in the amended notice—the process and series of internal transactions by which Canadian Pacific would acquire and place the stock of Kansas City Southern in trust—is identical to that described in the March 2021 Notice. (*Compare* Amended Notice 4–5 *with* March 2021 Notice 2–3.) Similarly, the transaction itself—the combination of Applicants' respective rail networks under Canadian Pacific's control upon receipt of regulatory approval—remains unchanged. The voting trust that Canadian Pacific proposes to use to hold the shares of Kansas City Southern during the pendency of the control proceeding is also substantively identical to the voting trust approved by the Board in *Decision No. 5,* with the modifications required by that decision. (Amended Notice 5; *id.,* Ex. 3 (redline comparison).) Applicants state that the proposed trustee, David L. Starling, has again agreed to serve as trustee. (Amended Notice 5.) Applicants also acknowledge that, as stated in *Decision No. 5,* any modification to the Voting Trust Agreement must be submitted to the Board for review and approval; the Board retains authority to compel amendment of the Voting Trust Agreement and compliance with any divestiture or other directive; and all communications between CP and KCS during the trust period must occur under the supervision of the trustee pursuant to guidelines he would be responsible for implementing to assure that the information exchanges that occur between the carriers do not compromise the independent management and operation of KCS. (Amended Notice 6 n.8 (citing *Decision No. 5,* FD 36500, slip op. at 9).)

The amended notice further states that the pertinent circumstances relating to CP's proposed use of a voting trust have not changed relative to those underlying the Board's conclusion in *Decision No. 5.* (Amended Notice 6.) In particular, Applicants state the provisions of the merger agreement relating to the conduct of KCS's business while KCS is in trust, including provisions relating to incentive compensation for KCS employees, remain the same (and in one case, allow for additional flexibility on KCS's part). (Amended Notice 6; *see generally id.,* Ex. 1, §§ 5.1, 5.7.) Accordingly, Applicants assert that the voting trust would ensure that Canadian Pacific's acquisition of Kansas City Southern's shares will not result in ''unauthorized control of a regulated carrier,'' and that the Board's related findings in *Decision No. 5* remain applicable. (Amended Notice 6 (quoting *Decision No. 5,* FD 36500, slip op. at 10).) Additionally, Applicants contend that the use of a voting trust would not compromise the ''financial strength or operational capabilities of Kansas City Southern or Canadian Pacific'' if a divestiture of KCS were required. (Amended Notice 6 (quoting *Decision No. 5,* FD 36500, slip op. at 10).) Applicants state that CP and KCS both remain financially healthy and expect to grow independently during the trust period. (Amended Notice 6.) Although the financial terms of the offer have changed,[3] Applicants explain that the ''improved'' terms are in the form of additional Canadian Pacific voting securities, with no increase in the cash consideration to be paid to Kansas City Southern's shareholders or increase in CP's debt levels. (Amended Notice 4; *see also id.* at 6–7 (also noting that the interest of private equity investors in acquiring KCS remains strong).) Applicants further state that all other terms of the merger agreement remain substantially the same. (Amended Notice 4 (citing *id.,* Ex. 1 (redline comparison of March 2021 and September 2021 Merger Agreements)).)

The information provided in the amended notice indicates that Applicants intend to seek approval of the same transaction—the combination of Applicants' respective rail networks under Canadian Pacific's control—that

[1] For additional background, *see Decision No. 3,* FD 36500, slip op. at 2–3.

[2] With the amended notice, Applicants have submitted a version of the September 2021 Merger Agreement that shows ''redline'' comparisons to the March 2021 Merger Agreement. (Amended Notice, Ex. 1.) Applicants also submitted versions of the proposed voting trust agreement (Voting Trust Agreement) that show redline comparisons to the voting trust agreement submitted to the Board in March 2021 and comparisons to the voting trust agreement that had been modified in accordance with *Decision No. 5.* (Amended Notice, Exs. 2 & 3.)

[3] (*See* Amended Notice, Ex. 1, §§ 2.1, 8.16 (definition of ''Exchange Ratio'') (modifying Exchange Ratio on which the ''Share Consideration'' is based, but not increasing the ''Cash Consideration'').) Applicants state that CP has also agreed to pay, on KCS's behalf, the ''break fee'' that KCS became obligated to pay to CNR when it terminated the CNR merger agreement. (Amended Notice 4 n.4.)

was proposed in the March 2021 Notice and described in *Decision No. 3.* The voting trust proposed for use during the pendency of the control proceeding is substantively identical to the one approved in *Decision No. 5* and is properly structured to prevent unauthorized control and provide for the irrevocability of the trust as required by 49 CFR part 1013. The modified financial terms of CP's offer, which are not referred to in the Voting Trust Agreement, would not impact the operation of the voting trust; nor is there a basis to conclude that those terms would materially impact the carriers' financial stability or operational capabilities if a divestiture were required. Based on the information contained in the amended notice, there is no reason for the Board not to apply its previous approval granted in *Decision No. 5* for Applicants to use the voting trust described in the amended notice.

The Board notes, however, that where parties seek review of a proposed voting trust and receive approval from the Board, it is not a foregone conclusion that the approval remains effective where a merger agreement is terminated but later revived. Additionally, the Board's authority ''to rule on, or prevent the use of, a voting trust . . . is inherent in [its] statutory authority over rail mergers,'' *Major Rail Consolidation Procs.,* 5 S.T.B. 539, 567 (2001), and the agency retains continuing jurisdiction to order modifications and correct future problems that may come to its attention. *See generally Decision No. 5,* FD 36500, slip op. at 9–10; *Union Pac. Corp.—Request for Informal Op.—Voting Tr. Agreement,* FD 32619, slip op. at 6 & n.10 (ICC served Dec. 20, 1994); *Santa Fe S. Pac. Corp.—Control—S. Pac. Transp. Co.,* 2 I.C.C.2d 709, 715, 834–35 (1986). Applicants are reminded that while the Board has approved the use of a voting trust for this transaction, Applicants must continue to ensure that the management and operation of KCS remain independent during the pendency of the control proceeding in order to effectively insulate Canadian Pacific from any violation of 49 U.S.C. 11323(a)'s prohibition against unauthorized acquisition of control of a regulated carrier, as described further in the guidelines at 49 CFR part 1013 and *Decision No. 5.*

With respect to communications, Applicants are reminded that only three types of communications between CP and KCS are permitted during the trust period: (1) Communications relating to the Board's review of the transaction and related planning for post-approval integration that would be the focus of the public interest benefits of the transaction; (2) communications between rail carriers in the ordinary course of their independent business relationships, such as in connection with their ongoing interactions as connecting carriers and participation in industry-wide U.S. regulatory matters; and (3) data exchange required for the preparation of reporting to governmental and other entities by companies within a consolidated group, such as financial reporting. *Decision No. 5,* FD 36500, slip op. at 3. Applicants are further reminded that all such communications must occur under the supervision of the trustee pursuant to guidelines the trustee will adopt, and that those guidelines must include a requirement that communications in the first category involving confidential information must be subject to the protective order that has been entered in this proceeding and used solely for the stated purpose and not for any other business or commercial purpose. *Id.* at 9. Additionally, the guidelines must also include an explicit acknowledgement that the trustee is responsible for implementing measures to monitor and assure that the information exchanges that occur between the carriers do not compromise the independent management and operation of Kansas City Southern during the duration of the trust. *Id.*

Should the voting trust be consummated, the Board will likewise continue to monitor the relationships and interactions of the parties to ensure the independence of the trustee and KCS. Should the voting trust not function as expected, the trustee not fulfill his obligations under the terms of the voting trust arrangement the Board has approved, or Applicants otherwise engage in impermissible management or operational conduct, the Board will take appropriate remedial action.

Proposed Procedural Schedule. On March 22, 2021, Applicants filed a petition to establish a procedural schedule and submitted a proposed procedural schedule that provides for a 10-month period between the date an application is filed and the date on which the Board would issue its final decision on the merits. The Board will solicit comments on a proposed procedural schedule in a separate decision.

It is ordered:

1. The approval granted in *Decision No. 5* for Applicants to use a voting trust applies to the voting trust described in the amended notice, as discussed above.

2. This decision is effective on its service date.

Decided: September 30, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz. Board Member Primus dissented with a separate expression.

BOARD MEMBER PRIMUS, dissenting:

I strongly disagree with the majority's treatment of Applicants' new merger agreement and voting trust. To be clear, KCS terminated its original merger agreement with CP in order to pursue a merger with CNR. Now, having terminated its agreement with CNR, KCS has entered into a new merger agreement with CP that contains financial terms different from its previous agreement. However, in doing so, Applicants not only want to pick up from the point the original agreement was terminated, but also to keep the same voting trust.

With this new agreement, the Board again has been presented with the opportunity to thoroughly review a potential CP–KCS merger under the robust standards of the current merger rules. During consideration of the voting trust associated with the original merger agreement between CP and KCS, I stated my strong opposition to the KCS waiver based on this thought, as well as my belief that the waiver's very existence was baseless. Any merger involving KCS, a Class I no different from any other, should be brought before the Board under the current merger rules, especially in the context of an historic transcontinental merger, such as between CP and KCS.

The Board was correct to consider the proposed CNR–KCS merger under the current merger rules, which rightfully position public interest as the central tenet in the Board's deliberations. Ultimately, the Board concluded that the question of the public interest in the CNR–KCS voting trust had not been satisfied and the trust was denied. In the wake of this decision, the Board should give strong consideration to reviewing any subsequent merger agreement and accompanying voting trust under the new rules in order to be consistent and provide greater clarity as to how a proposed voting trust addresses the public interest.

All this raises the question: Should the Board pause to review the voting trust for the new CP–KCS merger agreement? The majority's decision acknowledges that ''it is not a forgone conclusion that the approval remains effective where a merger agreement is terminated but later revived.'' However, in this case it seems that approval was a forgone conclusion. Regardless of the similarities between the terminated and new agreements, I strongly feel that it is in the best public interest for the Board to evaluate this transaction under the

current merger rules. The Board has just shown how effective and forward leaning applying the new rules can be in protecting the network's public interest. Why then the insistence to continue to rely on the waiver that removes consideration of the public interest in this voting trust agreement?

The topic of railroad consolidation has long been a public concern. Past efforts to consolidate have been viewed as both necessary and disruptive to our national rail network. In the 1990s, as the number of Class Is quickly shrank, concern over consolidation grew. The Board's resulting adoption of the current merger rules in 2001 was the appropriate response to this concern—in particular, its insistence that the public interest be a major component in the consideration of any voting trust and merger application. Now, twenty years later, the Board is once again front and center in the debate over consolidation and the future of the network. In the interest of the public good and for the well-being of the national rail network, any further consolidation of the Class Is should be subjected to the current merger rules which call for the Board to consider whether the public interest is best served by a merger agreement's proposed voting trust. For these reasons, I respectfully dissent.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2021–21795 Filed 10–5–21; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations and Ongoing Monitoring: Investigation Concerning Vietnam's Acts, Policies and Practices Related to Illegal Timber

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: Based on an agreement reached between the United States of America and the Socialist Republic of Vietnam (the Parties) regarding illegal logging and timber trade, the U.S. Trade Representative has determined that no action is warranted at this time because the subject matter of this investigation has been resolved satisfactorily. The U.S. Trade Representative will monitor Vietnam's implementation of the commitments it has agreed to.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, contact David Lyons, Assistant General Counsel, 202–395–9446; Kimberly Reynolds, Assistant General Counsel, 202–395–6336; Marta Prado, Deputy Assistant U.S. Trade Representative for Southeast Asia and the Pacific, 202–395–6216; or Joseph Johnson, Senior Director for Environment and Natural Resources, 202–395–2464.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

On October 2, 2020, the U.S. Trade Representative initiated an investigation of Vietnam's acts, policies and practices related to the import and use of illegal timber pursuant to Section 301(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act). *See* 85 FR 63639 (Oct. 8, 2020) (notice of initiation). On the same date, USTR requested consultations with Vietnam, which were held on January 7, 2021. The Section 301 Committee solicited comments and held a public hearing on December 28, 2020. *See* 85 FR 75398 (Nov. 25, 2020).

USTR initiated the investigation to examine reports that Vietnam's wood processing industry relies upon imported timber that may have been illegally harvested or traded. The notice of initiation indicated that the investigation would initially focus on three issues: (1) That certain timber imports may be inconsistent with Vietnam's domestic laws, the laws of exporting countries, or international rules, (2) the adequacy of Vietnam's enforcement measures at the border with respect to imported timber, and (3) other acts, policies and practices of Vietnam relating to the import and use of illegally harvested or traded timber. Investigating these issues has involved an examination of Vietnam's ongoing implementation of its new, risk-based ''timber legality assurance system'' and potential improvements to that system.

During the last several months of the investigation, USTR has engaged with Vietnam in an effort to reach an agreement that would resolve U.S. concerns with Vietnam's import and use of illegal timber. As described below, these efforts have been successful.

II. Agreement With Vietnam and Associated Determinations

On October 1, 2021, the U.S. Trade Representative and the Minister for the Ministry of Agriculture and Rural Development of Vietnam signed the *Agreement between the Governments of the Socialist Republic of Vietnam and the United States of America on Illegal Logging and Timber Trade* (the Agreement). The Agreement is publicly available on USTR's website at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-vietnam-timber.*

The Agreement reflects the Parties' shared understanding of the importance of combating illegal logging and associated trade. It contains multiple commitments on issues related to illegal timber, including:

- Vietnam's treatment of confiscated timber.
- Financial incentives related to illegal timber.
- Customs inspections and clearance.
- Entities covered by Vietnam's timber legality assurance system.
- The criteria used to classify a third country as a ''positive geographical area exporting timber to Vietnam''.
- The verification of domestically harvested timber.
- The implementation of certain licensing schemes.
- Cooperation with the governments of third-country sources of imported timber.
- Illegal timber activities in third countries or involving third-country nationals.
- Verification and enforcement measures.
- Cooperation between the Parties' respective law enforcement agencies to combat the harvest and trade of illegal timber.
- Creation of a timber working group under the U.S.-Vietnam Trade and Investment Framework Agreement Council.
- Public information and participation on matters related to the implementation of the Agreement.
- Cooperation on technical assistance and initiatives to promote sustainable forest management and to combat illegal logging and associated trade.

The U.S. Trade Representative has found that the Agreement satisfactorily resolves the matter subject to investigation. Therefore, the U.S. Trade Representative has determined that the investigated acts, policies, and practices are not actionable in light of the Agreement and that no action is appropriate at this time.

III. Ongoing Monitoring

Pursuant to Section 306(a) of the Trade Act, the U.S. Trade Representative will monitor Vietnam's implementation of its commitments under the Agreement and associated measures. Pursuant to Section 306(b) of the Trade Act, if the U.S. Trade Representative determines that Vietnam is not satisfactorily implementing the Agreement or associated measures, then the U.S. Trade Representative will

consider further action under Section 301.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–21809 Filed 10–5–21; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons whose property and interests in property have been unblocked and removed from the list of Specially Designated Nationals and Blocked Persons.

DATES: See Supplementary Information section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On September 30, 2021, OFAC determined that the property and interests in property of the following persons are unblocked and removed from the SDN List.

Entities

1. ABIF INVESTMENT, S.A., Panama; RUC # 2022799–1–743641 (Panama) [SDNTK].
2. GRUPO LA RIVIERA PANAMA, S.A., Panama; RUC # 2038708–1–745998 (Panama) [SDNTK].
3. SOHO PANAMA, S.A.; RUC # 2422734–1–808115 (Panama) [SDNTK].
4. WAKED INTERNACIONAL PANAMA, S.A., Panama; RUC # 197517–1–394851 (Panama) [SDNTK].

Dated: September 30, 2021.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–21751 Filed 10–5–21; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES INSTITUTE OF PEACE

Notice of Board of Directors Meeting

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting.

SUMMARY: Meeting of the Board of Directors: Chair's Report; Vice Chair's Report; President's Report; Approval of Minutes; Meeting of the Board of Directors of the Endowment of the U.S. Institute of Peace; USIP Key Current Initiatives: *Afghanistan; Countering Violent Extremism;* and *Youth;* Reports from USIP Board Committees: Governance and Compliance; Strategy and Program; Audit and Finance; Security and Facilities; and Talent and Culture.

DATES: Friday, October 15, 2021 (10:00 a.m.–12:00 p.m.).

ADDRESSES: Virtual Board Meeting Information: Join by video: *https://usip-org.zoomgov.com/j/1600200755?pwd=TGJMbzNrQ2dVR3B3ZVJIZUxpQThVZz09;* Dial-in option: +1–646–828–7666; Meeting ID: 160 020 0755/ Passcode: 741347.

FOR FURTHER INFORMATION CONTACT: Megan O'Hare, 202–429–4144, *mohare@usip.org.*

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Authority: 22 U.S.C. 4605(h)(3).

Dated: September 30, 2021.

Megan O'Hare,

Chief of Staff.

[FR Doc. 2021–21834 Filed 10–5–21; 8:45 am]

BILLING CODE 6820–AR–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0491]

Agency Information Collection Activity Under OMB Review: Community Residential Care (CRC) Recordkeeping Requirements

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0491.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0491'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Community Residential Care (CRC) Recordkeeping Requirements.

OMB Control Number: 2900–0491.

Type of Review: Reinstatement of a previously approved collection.

Abstract: One of the standards a Community Residential Care (CRC) facility must meet is the requirement that the CRC must maintain records on each resident in a secure place. Facility records must include emergency notification procedures and a copy of all signed agreements with the resident. 38 CFR 17.63(i). These records must be maintained by the CRC, and the CRC must make those records available for VA inspection upon request. A Medical Foster Home is a subtype of CRC and is required to comply with the record keeping requirements of 38 CFR

17.63(i). See 38 CFR 17.74(q). In addition, the CRC must maintain and make available, upon request of the approving official, records related to CRC staff requirements and provide that the CRC has sufficient, qualified staff on duty and available to care for the resident and ensure the health and safety of each resident.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 128 on July 8, 2021, pages 36190 and 36191.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,095 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 730.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–21805 Filed 10–5–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Statement of Assurance of Compliance With 85 Percent Enrollment Ratios

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–NEW''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Title 38 United States Code (U.S.C.) 3680A(d) and 38 Code of Federal Regulations (CFR) 21.4201.

Title: Statement of Assurance of Compliance with 85 Percent Enrollment Ratios, VA Form 22–10215 and VA Form 22–10215a.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The Department of Veterans Affairs (VA) is authorized to pay education benefits to Veterans and other eligible persons pursuing approved programs of education under chapters 30, 31, 32, 33, and 35 of title 38, U.S.C., and chapter 1606 of title 10, U.S.C.

As part of the benefits authorization process, Code of Federal Regulations (CFR) Title 38 § 21.4201 places restrictions on enrollment based on the percentage of students receiving financial support in any approved program. Except as otherwise provided by regulation, VA shall not approve an enrollment in any course for an eligible Veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by VA under title 38, U.S.C., or under title 10, U.S.C. This is known as the 85/15 Rule and is applicable to Institutions of Higher Learning (IHLs) and Non-College Degree postsecondary schools (NCDs).

The requirements apply to all courses, not otherwise exempt or waived, offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported. These schools are required to submit information necessary to determine if their programs of training are approved for the payment of VA educational assistance. This specified information is submitted either to VA or to the State Approving Agency (SAA) having jurisdiction over that school.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 40680 on July 28, 2021.

Affected Public: Individuals or Households.

Estimated Annual Burden: 40,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 10,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–21761 Filed 10–5–21; 8:45 am]

BILLING CODE 8320–01–P

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