



A-570-896  
Sunset Review  
**Public Document**  
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September 10, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of  
Expedited Third Sunset Review of the Antidumping Duty Order on  
Magnesium Metal from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the substantive response of US Magnesium LLC (US Magnesium), a participating interested party in the sunset review of the antidumping duty order on magnesium metal from the People's Republic of China (China). We did not receive a substantive response from any other party. Accordingly, we conducted an expedited (120-day) sunset review of the antidumping duty order. Below is a complete list of issues in this sunset review for which received a substantive response:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins of Dumping Likely to Prevail

We recommend adopting the positions described in the "Discussion of the Issues" section of this memorandum.

## II. BACKGROUND

On June 1, 2021, Commerce published the *Initiation Notice*<sup>1</sup> of the third sunset review of the AD Order<sup>2</sup> on magnesium metal from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On June 7, 2021, Commerce received a notice of intent to participate from

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<sup>1</sup> See *Initiation of Five-Year (Sunset) Review*, 86 FR 29239 (June 1, 2021) (*Initiation Notice*).

<sup>2</sup> See *Notice of Antidumping Duty Order: Magnesium Metal from the People's Republic of China*, 70 FR 19928 (April 15, 2005) (*Order*).



US Magnesium within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> On June 8, 2021, US Magnesium submitted a timely substantive response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> US Magnesium claimed domestic interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic like product in the United States.<sup>5</sup> Commerce did not receive a substantive response from any other interested party with respect to the *Order*, nor was a hearing requested. On July 22, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from any respondent interested party.<sup>6</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order*.

The *Order* on magnesium metal from China remains in effect for all producers and exporters of the subject merchandise.<sup>7</sup>

### III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* is magnesium metal, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the *Order* includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an “ASTM Specification for Magnesium Alloy”<sup>8</sup> and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as “alloy” magnesium).

The scope of the *Order* excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an “ASTM

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<sup>3</sup> See US Magnesium’s Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Magnesium Metal from the People’s Republic Of China: Domestic Interested Party Notice Of Intent To Participate,” dated June 7, 2021 (US Magnesium’s Notice of Intent to Participate).

<sup>4</sup> See US Magnesium’s Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Magnesium Metal from the People’s Republic Of China: Domestic Industry Substantive Response,” dated June 08, 2021 (US Magnesium’s Substantive Response).

<sup>5</sup> See US Magnesium’s Notice of Intent to Participate at 2.

<sup>6</sup> See Commerce’s Letter, “Sunset Reviews Initiated on June 1, 2021,” dated July 22, 2021.

<sup>7</sup> See *Order*.

<sup>8</sup> The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

Specification for Magnesium Alloy;”<sup>9</sup> (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, alumina (Al<sub>2</sub>O<sub>3</sub>), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.<sup>10</sup>

The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### IV. HISTORY OF THE *ORDER*

##### (1) Final Determination of Sales at Less-than-Fair-Value and *Order*

On February 24, 2005, Commerce published its final affirmative determination of sales at less than fair value (LTFV) in the *Federal Register* with respect to imports of magnesium metal from China.<sup>11</sup> On March 29, 2005, Commerce published its amended affirmative determination of sales at LTFV with respect to magnesium metal from China.<sup>12</sup> In the amended final determination, Commerce calculated the following weighted-average dumping margins:

Exporter	Weighted-Average Margin (percent)
Tianjin Magnesium International Co., Ltd. (TMI)	49.66

<sup>9</sup> The material is already covered by existing antidumping orders. See *Notice of Antidumping Duty Orders: Pure Magnesium from the People’s Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation*, 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People’s Republic of China*, 66 FR 57936 (November 19, 2001).

<sup>10</sup> This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-2001 investigations of magnesium from China, Israel, and Russia. See *Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People’s Republic of China*, 66 FR 49345 (September 27, 2001); see also *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001); and, *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

<sup>11</sup> See *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 9037 (February 24, 2005).

<sup>12</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People’s Republic of China*, 70 FR 15838 (March 29, 2005).

Beijing Guangling Jinghua Science Technology Co., Ltd. (Guangling)	49.66
China-Wide Entity	141.49

Following the publication of Commerce's amended affirmative determination, the International Trade Commission (ITC) found that the U.S. industry was materially injured or threatened with material injury by reason of the imports of subject merchandise.<sup>13</sup> On April 15, 2005, Commerce published an antidumping duty order on magnesium metal from China.<sup>14</sup>

There have been no new duty-absorption findings, scope rulings or changed circumstance reviews since the previous sunset review. No new shipper reviews have been requested or conducted under the *Order*.

## **(2) Subsequent Administrative Reviews**

Since publication of the *Order*, Commerce initiated fourteen administrative reviews of the antidumping duty order on magnesium metal from China, completing eleven reviews, nine of which reported no shipments, and rescinding three reviews.

Deposit rates remain in effect for imports of subject merchandise from China.

## **(3) Prior Sunset Review**

Commerce published the final results of the second sunset review on June 8, 2016, in which it determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.<sup>15</sup> As a result and pursuant to section 751(d)(2) of the Act, Commerce published a notice of continuation following the ITC's determination that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to the domestic injury within a reasonably foreseeable time.<sup>16</sup>

## **V. LEGAL FRAMEWORK**

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these

<sup>13</sup> See *Magnesium from China and Russia*, 70 FR 19969 (April 15, 2005).

<sup>14</sup> See *Order*.

<sup>15</sup> See *Magnesium Metal from the People's Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 81 FR 36874 (June 8, 2016) (*Second Sunset*), and accompanying Issues and Decision Memorandum (IDM).

<sup>16</sup> See *Magnesium Metal from the People's Republic of China: Continuation of Antidumping Duty Order*, 81 FR 47351 (July 21, 2016) (*Second Sunset Continuation*).

determinations, Commerce shall consider both the weighted-average dumping margins determined in the investigations and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and after the issuance of the *Order*.

In accordance with the guidance provided in the legislative history in the SAA,<sup>17</sup> the House Report,<sup>18</sup> and the Senate Report,<sup>19</sup> Commerce's determinations of likelihood will be made on an order-wide, rather than company-specific, basis.<sup>20</sup> In addition, Commerce normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>21</sup>

In addition, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.<sup>22</sup> When analyzing import volumes for first and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding the initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.<sup>23</sup>

Alternatively, Commerce normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.<sup>24</sup> Pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>25</sup>

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<sup>17</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA).

<sup>18</sup> See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

<sup>19</sup> See S. Rep. No. 103-412 (1994) (Senate Report).

<sup>20</sup> See SAA at 879 and House Report at 56.

<sup>21</sup> See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also *Policies Regarding the Conduct of Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*; Policy Bulletin 98.3, 63 FR 18871, 18872 (April 16, 1998).

<sup>22</sup> See, e.g., *Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying IDM at Comment 1.

<sup>23</sup> See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM at 3.

<sup>24</sup> See SAA at 889-890; see also House Report at 63.

<sup>25</sup> See *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying IDM at Comment 1.

Generally, Commerce selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.<sup>26</sup> However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, “if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).<sup>27</sup>

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that, in five-year sunset reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.<sup>28</sup> However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews, pursuant to section 777A(d)(1)(B) of the Act.<sup>29</sup> In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.<sup>30</sup> Commerce further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”<sup>31</sup>

## VI. DISCUSSION OF THE ISSUES

### 1. Likelihood of Continuation or Recurrence of Dumping

#### *US Magnesium’s Comments*<sup>32</sup>

- US Magnesium argues that since dumping margins for exporter Guangling and the China-wide entity remain at 49.66 percent and 141.49 percent, respectively, and TMI only has a dumping margin of 0 percent because it has stopped shipping the subject magnesium metal to the United States for the last decade, there is likelihood of continued dumping of the subject product if the order were revoked.
- US Magnesium argues that dumping is likely to recur if the order is revoked because the subject magnesium metal imports by volume have fallen significantly (less than 5 percent

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<sup>26</sup> See SAA at 890; *see also Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

<sup>27</sup> See SAA at 890-91.

<sup>28</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

<sup>29</sup> *Id.*, 77 FR at 8102, 8105, and 8109.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See US Magnesium’s Substantive Response at 3-5.

for the period from 2016-2020 compared to pre-order levels) after the *Order* was put in place.

### **Commerce's Position:**

When determining whether revocation of the *Order* would likely lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct Commerce to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. Commerce generally selects the dumping margins from the original investigation as these rates are the most probative of the behavior of exporters without the discipline of an order in place. When analyzing import volumes for subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation (*i.e.*, 2003-2004, as the underlying investigation was initiated in March 2004) to import volumes since the issuance of the last continuation notice.<sup>33</sup> The last continuation notice for this sunset review was issued in July 2016.<sup>34</sup> Therefore, consistent with this practice, Commerce would typically compare import volumes in 2003 and 2004 to the five year sunset review period (*i.e.*, 2016-2021).

Accordingly, Commerce examined the ITC Dataweb statistics provided by US Magnesium for the relevant periods. Trade data for imports of magnesium metal under HTSUS 8104.19.00 from China indicate that imports of Chinese magnesium metal averaged approximately 59.2 metric tons per year in the 2016-2020 period compared with 13,262 metric tons in 2004.<sup>35</sup> Trade data for imports of magnesium metal under HTSUS 8104.30.00 from China indicate that imports of Chinese magnesium metal averaged approximately 413.2 metric tons per year in the 2016-2020 period compared with 6,794 metric tons in 2004.<sup>36</sup>

Consistent with the previous sunset review of this *Order*, we also find that dumping has continued at above *de minimis* levels. In the previous sunset review of this *Order*, Commerce examined the margin calculation information for the final 49.66 percent weighted-average margin for two respondents in the investigation, TMI and Guangling, and the China-wide entity, and found the calculations to be WTO-consistent.<sup>37</sup> Similar to the previous sunset review period, the margin for TMI was zero and TMI had no shipments to the United States during the sunset

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<sup>33</sup> See, *e.g.*, *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 79 FR 26208 (May 7, 2014), and accompanying IDM at 8; see also *Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying IDM at Comment 1.

<sup>34</sup> See *Second Sunset Continuation*.

<sup>35</sup> See US Magnesium's Substantive Response at Attachment 2

<sup>36</sup> See Substantive Response at Attachment 2

<sup>37</sup> See *Second Sunset* IDM at 8.

periods,<sup>38</sup> and the margin for Guangling remains at the investigation level. The China-wide rate of 141.49 percent from the final investigation was also calculated based on the use of total adverse facts available, consistent with Commerce's *Final Modification for Reviews*. As such, pursuant to section 752(c)(1) of the Act, Commerce finds evidence that above *de minimis* dumping margins generally applied to post-order entries of subject merchandise.

Therefore, pursuant to section 752(c)(1) of the Act, because above *de minimis* dumping margins continued after issuance of the *Order*, and Commerce found dramatically lower import volumes in the five years examined in comparison to the import volumes prior to the initiation of the investigation with respect to the HTSUS numbers for which we have information on the record, we find that dumping would be likely to continue or recur if the *Order* were revoked.

## 2. Magnitude of the Margins Likely to Prevail

### *US Magnesium's Comments*<sup>39</sup>

- US Magnesium argues that since the dumping margins present before the *Order* was enacted are the best indication for how exporters will act if the *Order* were revoked, if the order is rescinded, the margin likely to prevail is up to 141.49 percent.

### **Commerce's Position:**

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Order* were revoked. Commerce's preference is to select a rate from the investigation based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.<sup>40</sup> In the most recent sunset review of the *Order*, we determined that it was appropriate to provide the ITC with margins from the LTFV investigation for the magnitude of the margin likely to prevail because these margins best reflect the behavior of manufacturers, producers, and exporters without the discipline of an order

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<sup>38</sup> See, e.g., *Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 25386 (April 28, 2016) (finding no shipments during the 2014-2015 review); *Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 12928 (March 8, 2017) (finding no shipments during the 2015-2016 review); *Magnesium Metal from the People's Republic of China: Final Determination of No Shipments; Antidumping Duty Administrative Review; 2016-2017*, 83 FR 22952 (May 17, 2018) (finding no shipments during the 2016-2017 review); *Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 26811 (June 10, 2019) (finding no shipments during the 2017-2018 review); *Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 37429 (June 22, 2020) (finding no shipments during the 2018-2019 review); *Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2019-2020*, 86 FR 36255 (July 9, 2021) (finding no shipments during the 2019-2020 review).

<sup>39</sup> See US Magnesium's Substantive Response at 5-6.

<sup>40</sup> See SAA at 890 and Policies Regarding the Conduct of five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin at section II.B.1; see also, e.g., *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying IDM at Issue 2.



in place.<sup>41</sup> As discussed above, subsequent to the previous sunset review, all administrative reviews have had no shipment determinations. In accordance with Commerce's *Final Modification for Reviews*, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent. As noted above, in the previous sunset review, Commerce examined whether the dumping margins determined in the LTFV investigation and all subsequent reviews were calculated using zeroing. We found that Commerce calculated the final margin for TMI, Guangling, and the China-wide rate using a methodology that is consistent with Commerce's *Final Modification for Reviews*. Commerce also used the China-wide rate as the margin likely to prevail for all other producers/exporters in the prior sunset review. After considering the previously determined dumping margins, and given the lack of argument and evidence to the contrary, Commerce finds no reason to depart from our previous determination in the prior sunset review. Therefore, pursuant to section 752(c)(3) of the Act, Commerce will report to the ITC the China-wide rate as indicated in the "Final Results of Sunset Review" section of this memorandum.

## VII. FINAL RESULTS OF SUNSET REVIEW

Commerce determines that revocation of the antidumping duty order on magnesium metal from China would likely lead to continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 141.49 percent.

## VIII. RECOMMENDATION

Based on our analysis of the response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register*.



Agree

Disagree

9/10/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary  
for Enforcement and Compliance

<sup>41</sup> See *Second Sunset* IDM at 9.